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**UNITED STATES BANKRUPTCY COURT FOR  
THE CENTRAL DISTRICT OF CALIFORNIA - NORTHERN DIVISION**

In re:  
  
HVI CAT CANYON INC.,  
  
Debtor.

Case No. 9:19-bk-11573-MB

Chapter 11

**SUPPLEMENTAL BRIEF OF UBS AG,  
LONDON BRANCH AND UBS AG,  
STAMFORD BRANCH IN SUPPORT OF  
TRUSTEE'S MOTION TO EXPUNGE  
NOTICES OF OIL AND GAS LIENS  
FILED BY CALIFORNIA ASPHALT  
PRODUCTION, INC., GTL1, LLC, AND  
GIT, INC.; DECLARATION OF BRIAN  
M. METCALF IN SUPPORT THEREOF**

Hearing

Date: May 19, 2020

Time: 10:30 a.m.

Place: Courtroom 201

1415 State Street

Santa Barbara, California 93101

1 **I. INTRODUCTION**

2 California Asphalt Production, Inc. (“CAP”), GTL1, LLC (“GTL1”), and GIT, Inc. (“GIT”,  
3 and together with CAP and GTL1, the “Lien Claimants”) and their counsel willfully violated the  
4 automatic stay by attempting to create postpetition liens against property of the estate to secure  
5 postpetition claims for materials and services allegedly provided to HVI Cat Canyon, Inc. (the  
6 “Debtor”). They now seek to evade expungement of the liens and potential contempt sanctions  
7 through deliberate misrepresentations of law and fact.

8 To salvage their liens, the Lien Claimants rely on a narrow exception to the automatic stay  
9 that permits the postpetition perfection of liens that arose and already existed under applicable  
10 nonbankruptcy law before commencement of the bankruptcy case.<sup>1</sup> Following strict instruction  
11 from the Court to stop obfuscating the matter, the Lien Claimants’ counsel reluctantly conceded  
12 that the liens are based exclusively on claims for materials and services that were supposedly  
13 provided to the Debtor after it filed for bankruptcy.<sup>2</sup> Apparently viewing the Court’s directive in  
14 isolation, the Lien Claimants then immediately returned to deception by pivoting to a fictional  
15 construction of the California Oil and Gas Lien Act<sup>3</sup> that “provides for a relation back [of the liens]  
16 to the beginning of the contractual relationship between the entities”.<sup>4</sup> This implausible  
17 characterization of the statute violates the clear and unambiguous terms of the California Oil and  
18 Gas Lien Act. Even worse, it flatly contradicts the notices of oil and gas liens the Lien Claimants’  
19 counsel filed with the Court that provide “the liens relate back to the date of the furnishing of the  
20 first item of material or services or the date of performance of the first labor for which [the] lien is  
21 claimed”.<sup>5</sup>

22  
23 <sup>1</sup> UBS AG, London Branch and UBS AG, Stamford Branch (collectively, “UBS”) dispute that CAP, GTL1 and  
GIT are entitled to any liens or claims under the California Oil and Gas Lien Act.

24 <sup>2</sup> See *Declaration of Brian M. Metcalf* at Exhibit A (Transcript of Hearing Re: [875] Motion to Expunge (Re:  
25 Related Document(s) 821 Notice, 822 Notice, 823 Notice), Trustee’s Notice of Motion and Motion to Expunge: (1)  
Notice of Oil and Gas Lien; (2) Notice of Oil and Gas Lien; and (3) Notice of Oil and Gas Lien; Memorandum of  
Points and Authorities and Request for Judicial Notice, In Support Thereof) (the “Transcript”), 192:5-16.

26 <sup>3</sup> See Cal. Code of Civ. Proc. §§ 1203.50 – 1203.66.

27 <sup>4</sup> Transcript at 193:14-17.

28 <sup>5</sup> *Notice of Oil and Gas Lien* (Docket No. 821) at 2 (internal quotation marks omitted); *Notice of Oil and Gas  
Lien* (Docket No. 822) at 2 (internal quotation marks omitted); *Notice of Oil and Gas Lien* (Docket No. 823) at 2  
(internal quotation marks omitted).

1 As a matter of law, liens under the California Oil and Gas Lien Act can never be created or  
2 arise beyond the six-month period that precedes recording a statement of lien. In pertinent part, the  
3 statute provides that eligible claimants “shall be entitled to a lien . . . for the amount due [them] for  
4 any such labor performed, or materials or services furnished, within six months prior to the date of  
5 recording the statement of lien . . . .”<sup>6</sup> As the statute makes clear, recording the lien statement is  
6 the operative act that creates the lien and sets the period of time it covers. Therefore, if an eligible  
7 claimant does not record the statement of lien, it never obtains any lien at all.<sup>7</sup> However, even if  
8 the claimant properly records the statement of lien, the lien that is created will be limited to amounts  
9 due for services or materials provided by the claimant within six months prior to the recording date.

10 Similarly, the statute provides that the lien “arises on the date of the furnishing of the first  
11 item of material or services or the date of performance of the first labor for which a lien is claimed  
12 under the provisions of this chapter”.<sup>8</sup> In other words, the lien arises and relates back only to the  
13 first date that a lien may be claimed under the California Oil and Gas Lien Act. Since that date is  
14 always statutorily limited to services or materials provided “within six months prior to the date of  
15 recording the statement of lien”, the lien securing the claim can never arise any earlier than six  
16 months before the lien statement is recorded.

17 Taken together, these provisions plainly establish that liens under the California Oil and  
18 Gas Lien Act cannot be created, arise, or relate back more than six months before the claimant has  
19 recorded a statement of lien. In this case, the Lien Claimants did not file the notices of oil and gas  
20 liens until February 24, 2020, so the earliest possible time their lien claims could arise under the  
21 California Oil and Gas Lien Act is sometime in August 2019. That period falls after the petition  
22 date of July 25, 2019 and outside of the exception to the automatic stay on which the Lien Claimants  
23 rely.

24 But the Court does not have to review or interpret the California Oil and Gas Lien Act to

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25 <sup>6</sup> Cal. Code of Civ. Proc. § 1203.52 (emphasis added).

26 <sup>7</sup> To create an effective lien under the California Oil and Gas Lien Act, the Lien Claimants were required to  
27 record lien statements in the counties where the Debtor’s oil and gas leases are situated within six months after the date  
28 materials and services were furnished to the Debtor. See Cal. Code of Civ. Proc. § 1203.58. It is not clear that the  
Lien Claimants ever recorded lien statements with any county recorder.

<sup>8</sup> Cal. Code of Civ. Proc. § 1203.56 (emphasis added).

1 reach this conclusion. Rather, the Court can simply refer to the Lien Claimants' own notices of oil  
2 and gas liens that assert "[t]he liens relate back to the 'date of the furnishing of the first item of  
3 material or services or the date of performance of the first labor for which [the] lien is claimed.'  
4 Cal. Civ. Proc. Code § 1203.56. Here, that date is August 2019."<sup>9</sup> Although CAP, GTL1, GIT,  
5 and other affiliates controlled by Randeep Grewal have frequently resorted to chicanery to plunder  
6 the estate, their new effort to mislead the Court into believing that liens under the California Oil and  
7 Gas Lien Act arose and relate back to some undefined prepetition point in time is particularly  
8 indefensible. The argument advanced by counsel that the liens relate back "to the beginning of the  
9 contractual relationship between the entities" cannot be reconciled with either the notices of oil and  
10 gas liens they filed on behalf of the Lien Claimants or the terms of the California Oil and Gas Lien  
11 Act. The Court should expunge the Lien Claimants' notices of oil and gas liens.

## 12 **II. ARGUMENT**

13 The Lien Claimants' efforts to distract and confuse the Court through convoluted analogies  
14 and lengthy expositions on mechanic's lien statutes cannot alter the express language of the  
15 California Oil and Gas Lien Act. Nor can their claim that the statute must be liberally construed,  
16 which the Lien Claimants appear to believe gives them license to ignore its plain terms. Despite  
17 their insistence, the provisions of the statute governing the creation of liens are straightforward and  
18 easy to apply based on the undisputed facts in this case. The fundamental rules of statutory  
19 interpretation under California law mandate enforcement of the statute according to its clear terms,  
20 and that requires expungement of the Lien Claimants' notices of oil and gas liens because they  
21 arose postpetition.

22 In Coates v. Shell Western E & P, Inc., 5 Cal. App. 4th 904 (Cal. Ct. App. 1992), the court  
23 interpreted the California Oil and Gas Lien Act and considered its application to claims for  
24 dismantling and removing transport pipes from wells after they had stopped producing oil. While  
25 acknowledging that the California Oil and Gas Lien Act "is to be given a liberal construction", the  
26 court rejected the notion that it could deviate from the clear terms of the statute. Id. at 910, 915-

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28 <sup>9</sup> *Notice of Oil and Gas Lien* (Docket No. 821) at 2 (emphasis added); *Notice of Oil and Gas Lien* (Docket No. 822) at 2 (emphasis added); *Notice of Oil and Gas Lien* (Docket No. 823) at 2 (emphasis added).

1 16. The court explained that “[t]he language of an enactment controls the construction, though  
2 extraneous aids may be resorted to where the language is ambiguous and the legislative intent not  
3 clearly ascertainable. But if the legislative intent is clearly expressed on the face of the statute, its  
4 meaning cannot be challenged. A construction that will lead to a conclusion not contemplated by  
5 the Legislature, occasion great inconvenience, inequality, or injustice, or lead to absurd and unfair  
6 consequences is to be avoided.” *Id.* at 915 (internal citations omitted). Applying these principles,  
7 the court held that the California Oil and Gas Lien Act did not apply to the claims because the  
8 statute on its face was limited to materials, work or labor furnished while oil was still being  
9 produced. *Id.*

10 Here, the provisions of the California Oil and Gas Lien Act that control the creation of liens  
11 are equally clear and unambiguous on their face, and they do not “provide[] for a relation back to  
12 the beginning of the contractual relationship between the entities” as the Lien Claimants now  
13 contend.<sup>10</sup> Quite the opposite, they strictly limit the lien to a six-month period before the claimant  
14 records a statement of lien. The provision granting the right to a lien provides that:

15 Any person who shall, under contract with the owner of any leasehold for oil or gas  
16 purposes perform any labor or furnish any material or services used or employed,  
17 or furnished to be used or employed in the drilling or operating of any oil or gas  
18 well upon such leasehold, or in the constructing, putting together, or repairing of  
19 any material so used or employed, or furnished to be so used or employed, shall be  
20 entitled to a lien under this chapter, whether or not a producing well is obtained and  
21 whether or not such material is incorporated in or becomes a part of the completed  
22 oil or gas well, for the amount due him for any such labor performed, or materials  
23 or services furnished, within six months prior to the date of recording the statement  
24 of lien as provided in Section 1203.58, including, without limitation, shipping and  
25 mileage charges connected therewith, and interest from the date the same was due.

26 Cal. Code Civ. P. § 1203.52 (emphasis added).

27 “[R]ecording the statement of lien as provided in Section 1203.58” is the action that creates  
28 the lien and establishes the period of time it covers. *Id.* Until that happens, the eligible claimant  
does not have an effective lien. *See* Cal. Code. Civ. P. § 1203.58 (“The statement of lien must be  
recorded within six months after the date on which the claimant’s labor was performed or his

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<sup>10</sup> Transcript at 193:14-17.

1 materials or services were furnished to be effective as to such labor, materials, or services.”). But  
2 even after that occurs, the claimant is still only entitled to a lien for “the amount due [to the  
3 claimant] for any such labor performed, or materials or services furnished, within six months prior  
4 to the date of recording the statement of lien.” Cal. Code Civ. P. § 1203.52. Stated differently, it  
5 excludes claims for labor, materials or services that were provided more than six months before the  
6 statement of lien was recorded. In short, the lien created under the California Oil and Gas Lien Act  
7 is statutorily limited to claims within six months from the date the claimant records the statement  
8 of lien and never extends beyond that period.

9 In turn, the first date that a lien may be claimed under the California Oil and Gas Lien Act  
10 establishes the date that the lien arises. The provision setting the date the lien arises provides that:

11 The lien provided for in this chapter arises on the date of the furnishing of the first  
12 item of material or services or the date of performance of the first labor for which  
13 a lien is claimed under the provisions of this chapter. Upon compliance with the  
14 provisions of Section 1203.58, such lien shall be preferred to all other titles,  
15 charges, liens or encumbrances which may attach to or upon any of the property  
upon which a lien is given by this chapter subsequent to the date the lien herein  
provided for arises.

16 Cal. Code Civ. P. § 1203.56 (emphasis added).

17 Simply put, the lien arises and relates back to the first date that the claimant is eligible to  
18 claim a lien under the California Oil and Gas Lien Act. As explained above, that date is statutorily  
19 restricted to claims for services or materials provided by the claimant “within six months prior to  
20 the date of recording the statement of lien” and does not extend beyond that period. Cal. Code Civ.  
21 P. § 1203.52. Because the period for “which a lien is claimed under the [California Oil and Gas  
22 Lien Act]” can never exceed six months from the date the claimant records the statement of lien,  
23 the earliest possible time that the lien can arise also is six months from the recording date. Cal.  
24 Code Civ. P. § 1203.56.

25 In tandem, these provisions establish a simple coextensive framework for the creation of  
26 liens under the California Oil and Gas Lien Act. The claimant is only able to claim a lien for labor,  
27 materials or services that it provides within the six-month period prior to recording the statement  
28 of lien. See Cal. Code Civ. P. § 1203.52. Once the statement of lien is recorded, the lien arises and

1 relates back to the first date that the claimant is eligible to claim a lien under the statute, i.e., at  
2 some point within the same six-month period. To illustrate, if the claimant records the statement  
3 of lien within three months of providing materials and services, the lien arises and relates back to  
4 the first date the materials and services were furnished within that three-month period and secures  
5 the full amount of the claim. However, if the claimant provides materials and services for eight  
6 months before it records the statement of lien, the earliest the lien can arise and relate back is six  
7 months from the recording date and only part of the claim will be secured.

8 In sum, the California Oil and Gas Lien Act imposes a maximum period for eligible lien  
9 claims, and they cannot be created, arise, or relate back more than six months before the claimant  
10 has recorded a statement of lien. Because the Lien Claimants filed their notices of oil and gas liens  
11 on February 24, 2020, their liens could not arise under the statute any earlier than some point in  
12 August 2019. Given that the Debtor's bankruptcy case was commenced on July 25, 2019, the liens  
13 asserted by the Lien Claimants did not exist until after the petition date and the limited exception  
14 to the automatic stay that permits the postpetition perfection of liens is inapplicable.

15 Incredibly, even though the Lien Claimants' counsel now declares that the statute "provides  
16 for a relation back to the beginning of the contractual relationship between the entities", the notices  
17 of oil and gas liens they filed on behalf of the Lien Claimants interpret and apply the statute in  
18 exactly the same manner. Indeed, they even identify the same date that the liens arise and relate  
19 back under the same provisions of the statute. Specifically, the Lien Claimants expressly provide  
20 in each of their notices of oil and gas liens that "[t]he liens relate back to the 'date of the furnishing  
21 of the first item of material or services or the date of performance of the first labor for which [the]  
22 lien is claimed.'" Cal. Civ. Proc. Code § 1203.56. Here, that date is August 2019."<sup>11</sup>

23 The Lien Claimants' admission that their liens may only relate back to August 2019 is  
24 dispositive. Moreover, it is correct. Even had the Lien Claimants not conceded that the liens arose  
25 postpetition, their tortured construction of the statute contradicts its clear and unambiguous terms  
26 and leads to absurd consequences, and they cite no authority to support it. Plainly stated, the statute

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28 <sup>11</sup> *Notice of Oil and Gas Lien* (Docket No. 821) at 2 (emphasis added); *Notice of Oil and Gas Lien* (Docket No. 822) at 2 (emphasis added); *Notice of Oil and Gas Lien* (Docket No. 823) at 2 (emphasis added).

1 does not provide that the lien relates back to “the beginning of the contractual relationship between  
2 the entities”. In fact, it does not even refer to a contractual relationship when setting the date that  
3 the lien arises. Rather, the statute on its face provides that the lien “arises on the date of the  
4 furnishing of the first item of material or services or the date of performance of the first labor for  
5 which a lien is claimed under the provisions of this chapter”. Cal. Code Civ. P. § 1203.52. If the  
6 California legislature intended the lien to relate back to “the beginning of the contractual  
7 relationship between the entities”, it would have provided as much in the statute. For instance, the  
8 statute could provide that the lien “arises on the date of the furnishing of the first item of material  
9 or services or the date of performance of the first labor under the contractual relationship between  
10 the entities”. But the legislature did not draft the statute in that manner. Instead, it specifically tied  
11 the time that the lien arises to the date the claimant is eligible to claim a lien under the statute.

12 The Lien Claimants’ unsupportable construction not only violates those plain terms, it leads  
13 to an absurd scenario where the lien relates back to some ancient point in time where the claimant  
14 could not even assert a claim under the statute. It does not make any sense for a lien to relate back  
15 to a date that is ineligible to support a claim under the statute, and the California legislature did not  
16 intend that result when it enacted the California Oil and Gas Lien Act. Again, the statute does not  
17 state that the lien “arises on the date of the furnishing of the first item of material or services or the  
18 date of performance of the first labor even if a lien cannot be claimed for any such material, services  
19 or labor under the provisions of this chapter”. To the contrary, the statute clearly provides that the  
20 lien arises on the first date that a lien for materials, services or labor can be claimed under the  
21 California Oil and Gas Lien Act and must be enforced according to those terms. See Coates, 5 Cal.  
22 App. 4th at 915.<sup>12</sup>

23 Engaging in base misdirection, the Lien Claimants seek to borrow the well-known rule for  
24 mechanic’s liens that relate back to the commencement of a “work of improvement” or project and  
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26 <sup>12</sup> The Lien Claimants alternatively posit that their liens arose prepetition under Bankruptcy Code Section 502(g)  
27 due to the rejection of contracts they had with the Debtor. This claim also has no merit. As an initial matter, the  
28 California Oil and Gas Lien Act does not apply to claims for damages arising from the rejection of a contract under the  
Bankruptcy Code. Further, claims for contract rejection damages are classified as general unsecured claims against  
the estate. See 11 U.S.C. § 365(g)(1); In re TreeSource Indus., Inc., 363 F.3d 994, 998 (9th Cir. 2004). They do not  
grant any interest in property that could support a lien under the California Oil and Gas Lien Act.



1 import it into the California Oil and Gas Lien Act. See Cal. Civ. Code § 8400 et seq. While  
2 mechanic’s liens and oil and gas liens may share some similarities, they are not the same and have  
3 distinct rules that govern their creation. Thus, as the authorities cited by the Lien Claimants even  
4 recognize, “[o]il and gas mechanics’ and materialmen’s liens may differ significantly from typical  
5 mechanics’ and materialmen’s liens on construction or repair of a residential or commercial  
6 structure on realty.” Robert L. Schmid, *The Fundamentals of Oil and Gas Mechanics’ Liens*, 23  
7 *Tulsa L.J.* 573, 575 (1988).

8 In particular, the relation back rules for mechanic’s liens and oil and gas liens under the  
9 California Oil and Gas Lien Act are significantly different and purposely designed to address  
10 different situations. For example, a mechanic’s lien arises in a “work of improvement” or  
11 construction project and may relate back to the time the project was started. See Cal. Civ. Code  
12 § 8450. A lender can prioritize its lien by recording it before the project starts or requiring a  
13 cessation of work on the project that lasts long enough to “cure” any lien that may be senior. See  
14 California Civ. Code § 8412 (requiring recordation of mechanic’s lien within sixty days of notice  
15 of cessation of work). If the mechanic’s lien claimant does not record during the period that work  
16 on the project stops, it loses the lien.

17 In contrast, an ongoing oil and gas operation cannot be shut down every time that it needs  
18 new financing. As evidenced by the Debtor’s oil and gas leases, some oil and gas operations  
19 continue for decades, and shutting down production may actually forfeit those types of leases under  
20 their habendum clauses, as well as physically damage wells. It is unlikely that the California  
21 legislature intended to discourage the availability of financing for oil and gas producers by exposing  
22 new loans to unrecorded oil and gas liens that relate back in virtual perpetuity. The California Oil  
23 and Gas Lien Act balances these competing interests by strictly limiting the creation and relation  
24 back of liens to six months from the date a statement of lien is recorded. As a result, while the  
25 seniority of a lender’s lien may be subject to an oil and gas lien that extends at maximum to six  
26 months from the date the statement of lien is recorded, it is not vulnerable to the unlimited and  
27 unforeseeable period of time that the Lien Claimants urge. The Lien Claimants ignore the  
28 instruction from their own authorities that “[s]ince mechanics’ and materialmen’s liens are

1 legislative products, it is essential to read relevant state statutes to determine the details of this legal  
2 device.” 23 Tulsa L.J. at 573. The Court should not be misled by the Lien Claimants’ inapt  
3 analogies to mechanic’s lien statutes.

4 Of course, the Trustee’s motion to expunge the liens does not implicate allowance of the  
5 Lien Claimants’ claims or their priority. Nevertheless, the Lien Claimants’ counsel aggressively  
6 argued that under their relation back theory “if this lien is valid it would be prior to the imposition  
7 of a 2016 lien asserted by UBS”.<sup>13</sup> As shown above, the Lien Claimants’ construction of the statute  
8 violates its clear terms and has no merit. UBS reserves the right to show that the Lien Claimants’  
9 position is contrary to this Court’s prior orders and subordination agreements between the parties.  
10 UBS also disputes that the Lien Claimants are entitled to any liens or claims under the California  
11 Oil and Gas Lien Act.

### 12 **III. CONCLUSION**

13 The Lien Claimants do not qualify for the limited exception to the automatic stay that  
14 permits the postpetition perfection of liens because the liens they assert could not exist or arise  
15 under the California Oil and Gas Lien Act until after the petition date. The Lien Claimants and  
16 their counsel willfully violated the automatic stay and the notices of oil and gas liens are invalid  
17 and should be expunged.

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28 <sup>13</sup> Transcript at 218:4-6.

1 Dated: May 8, 2020

2 EVAN M. JONES  
3 BRIAN M. METCALF  
4 SAMANTHA INDELICATO  
5 O'MELVENY & MYERS LLP

6 By: /s/ Brian M. Metcalf  
7 Brian M. Metcalf

8 *Attorneys for UBS AG, London Branch*  
9 *and UBS AG, Stamford Branch*

**DECLARATION OF BRIAN M. METCALF**

I, Brian M. Metcalf, declare as follows:

1. I am an attorney at O'Melveny & Myers LLP, counsel of record for UBS AG, London Branch and UBS AG, Stamford Branch in this matter. I am admitted to practice in the State of California and before this Court. I submit this declaration in support of the *Supplemental Brief of UBS AG, London Branch and UBS AG, Stamford Branch in Support of Trustee's Motion to Expunge Notices of Oil and Gas Liens Filed by California Asphalt Production, Inc., GTL1, LLC, and GIT, Inc.* Unless otherwise stated, I have personal knowledge of the facts stated in this declaration and, if called and sworn, could and would competently testify thereto.

2. Attached hereto as Exhibit A is a true and correct copy of the *Transcript of Hearing Re: [875] Motion to Expunge (Re: Related Document(s) 821 Notice, 822 Notice, 823 Notice), Trustee's Notice of Motion and Motion to Expunge: (1) Notice of Oil and Gas Lien; (2) Notice of Oil and Gas Lien; and (3) Notice of Oil and Gas Lien; Memorandum of Points and Authorities and Request for Judicial Notice, In Support Thereof.*

I declare under penalty of perjury under the laws of the United States that the foregoing is true to the best of my knowledge, information, and belief.

Dated this 8th day of May, 2020.

/s/ Brian M. Metcalf  
Brian M. Metcalf

# **EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA - NORTHERN DIVISION

--oOo--

In Re: ) Case No. 9:19-bk-11573-MB  
)  
HVI CAT CANYON, INC., ) Chapter 11  
)  
Debtor, ) Santa Barbara, California  
) April 17, 2020  
-----) Friday, 10:00 A.M.  
MCCONNELL, Chapter 11 Trustee )  
)  
Plaintiff, )  
)  
v. ) Adv. No. 9:20-ap-01006-MB  
)  
GLR, LLC, a Delaware limited )  
11 Liability company, )  
)  
Defendant. )  
-----X  
MCCONNELL, Chapter 11 Trustee )  
)  
Plaintiff, )  
)  
v. ) Adv. No. 9:20-ap-01011-MB  
)  
AANERUD, et al., )  
)  
Defendants. )  
-----)

HEARING RE: [812] MOTION TO  
ASSUME LEASE OR EXECUTORY  
CONTRACT - TRUSTEE'S NOTICE  
OF MOTION AND MOTION FOR AN  
ORDER:

(1) SETTING PROCEDURES FOR  
ASSUMPTION OF OIL AND GAS  
LEASES;

(2) AUTHORIZING ASSUMPTION OF  
SURFACE LEASES; AND

Proceedings produced by electronic sound recording;  
transcript produced by transcription service.

(3) AUTHORIZING REJECTION OF  
THE LAKEVIEW OFFICE AND  
WAREHOUSE LEASE; MEMORANDUM  
OF POINTS AND AUTHORITIES,  
DECLARATION OF MICHAEL  
MCCONNELL AND REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT  
THEREOF; PROOF OF SERVICE (DE  
LEEST, AARON)

HEARING RE: [875] MOTION TO  
EXPUNGE (RE: RELATED  
DOCUMENT(S) 821 NOTICE, 822  
NOTICE, 823 NOTICE),  
TRUSTEE'S NOTICE OF MOTION  
AND MOTION TO EXPUNGE:

(1) NOTICE OF OIL AND GAS  
LIEN;

(2) NOTICE OF OIL AND GAS  
LIEN; AND

(3) NOTICE OF OIL AND GAS  
LIEN; MEMORANDUM OF POINTS  
AND AUTHORITIES AND REQUEST  
FOR JUDICIAL NOTICE, IN  
SUPPORT THEREOF, WITH PROOF  
OF SERVICE (SINGH, SONIA)

HEARING RE: [909] MOTION FOR  
PROTECTIVE ORDER

STATUS CONFERENCE RE: CHAPTER  
11 VOLUNTARY PETITION FOR  
NON-INDIVIDUAL (TRANSFERRED  
FROM NEW YORK SOUTHERN ON  
89/29/2019) [TRANSFERRED FROM  
TEXAS NORTHERN ON 9/16/2019]

HEARING RE: [939] EMERGENCY  
MOTION - TRUSTEE'S NOTICE OF  
EMERGENCY MOTION AND FOURTH  
MOTION FOR AN ORDER:

(1) AUTHORIZING THE TRUSTEE  
TO OBTAIN ADDITIONAL POST-  
PETITION FINANCING;

(2) AUTHORIZING CONTINUED USE  
OF CASH COLLATERAL;

(3) SCHEDULING A FINAL  
HEARING;

(4) GRANTING RELATED RELIEF;  
AND

(5) RESPONSE TO COMMITTEE'S  
OBJECTION TO FIFTH AMENDMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES, DECLARATIONS OF  
MICHAEL A. MCCONNELL AND TIM  
SKILLMAN, AND REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT  
THEREOF; PROOF OF SERVICE (DE  
LEEST, AARON)

STATUS HEARING RE: [1]  
ADVERSARY CASE 9:20-AP-01006.  
COMPLAINT BY MICHAEL A.  
MCCONNELL, CHAPTER 11 TRUSTEE  
AGAINST GLR, LLC, A DELAWARE  
LIMITED LIABILITY COMPANY,  
GRL, LLC, A DELAWARE LIMITED  
LIABILITY COMPANY (CHARGE TO  
ESTATE). CHAPTER 11 TRUSTEE'S  
COMPLAINT:

(1) TO AVOID AND RECOVER  
PREFERENTIAL TRANSFERS;

(2) TO AVOID AND RECOVER  
FRAUDULENT TRANSFERS; AND

(3) FOR TURNOVER AND  
ACCOUNTING NATURE OF SUIT:

(12 (RECOVERY OF  
MONEY/PROPERTY - 547  
PREFERENCE)), (13 (RECOVERY  
OF MONEY/PROPERTY - 548  
FRAUDULENT TRANSFER)), (11  
(RECOVERY OF MONEY/PROPERTY -  
542 TURNOVER OF PROPERTY))

STATUS HEARING RE: [6]  
COUNTERCLAIM BY GLR, LLC A  
DELAWARE LIMITED LIABILITY  
COMPANY, GRL, LLC, A LIMITED  
LIABILITY COMPANY

HEARING RE: [85] MOTION TO  
INTERVENE IN TRUSTEE'S ACTION  
FOR DECLARATORY RELIEF;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF



HEARING RE: [170] MOTION TO  
SEVER CLAIMS AGAINST AND  
COUNTERCLAIM OF, BRADLEY LAND  
COMPANY; MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT;  
PROOF OF SERVICE

STATUS HEARING RE: [1]  
ADVERSARY CASE 9:20-AP-01011.  
COMPLAINT BY MICHAEL A.  
MCCONNELL, CHAPTER 11 TRUSTEE  
AGAINST DONNA JEAN AANERUD,  
RICHARD W. ACKERMAN, JANE A.  
ADAMS, JOHN S. ADAMS, CHARLES  
C. ALBRIGHT (CHARGE TO  
ESTATE). TRUSTEE'S COMPLAINT  
FOR DECLARATORY RELIEF NATURE  
OF SUIT: (91 (DECLARATORY  
JUDGMENT)) (SHECHTMAN, ZEV)

TRANSCRIPT OF TELEPHONIC PROCEEDINGS  
BEFORE THE HONORABLE MARTIN R. BARASH  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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19 Resources Division  
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7 MAYER OLIVARES, ESQ.  
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9 Quinn Emanuel Urquhart & Sullivan  
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Morganti Ranch; Bognuda Twitchell & Rice, LLP  
5 Trust; Candace Evenson; 215 North Lincoln Street  
Escolle: Santa Maria, California 93458

6 Court Recorder: Brad Handy  
7 U.S. Bankruptcy Court  
Central District of California  
8 1415 State Street  
Santa Barbara, California 93101  
9 (805) 884-4884

10 Court Transcriptionist: Ruth Ann Hager, C.E.T.\*\*D-641  
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1 SANTA BARBARA, CALIFORNIA, FRIDAY, APRIL 17, 2020

2 10:02 A.M.

3 --oOo--

4 THE CLERK: Please come to order. This court is  
5 now in session, the Honorable Martin R. Barash presiding.

6 THE COURT: All right. Good morning, everybody.  
7 Today is -- I'm going to ask everybody to start out by  
8 muting their lines, their party lines. We're getting a lot  
9 of feedback. And if you're on a computer taking advantage  
10 of the video feed, it clears any audio coming through, you  
11 should go ahead and mute this on your computer also to help  
12 avoid the feedback.

13 You're welcome. This is our omnibus hearing date  
14 in HVI Cat Canyon and we have a lot on the calendar. Let  
15 me start with a few admonitions. This hearing is in the  
16 first instance telephonic and that is how the court record  
17 will be made and preserved based on the audio. In order to  
18 maintain an environment in which everybody can hear  
19 everybody else, it's essential that we talk one at a time  
20 and that those of you that have appeared in my court before  
21 know that even when we are live together, I implore  
22 everybody to please not interrupt one another and I'm going  
23 to make that same request.

24 Today is not an evidentiary hearing. We're not  
25 examining witnesses. There is no reason to interrupt with

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1 any sort of objection. I will do everything I can to make  
2 sure everybody who wants to be heard is heard and  
3 contributes to the conversation. So if you have  
4 something -- a burning desire to say something, instead of  
5 interrupting please write it down and share it when we get  
6 around to you and hearing from you.

7 Okay. I also want to mention and hereby order  
8 that no person or entity is permitted to record this  
9 hearing by electronic means and you're specifically ordered  
10 not to do so, whether it's audio or video. There is but  
11 one court record that is being made by the court staff and  
12 preserved electronically and any other recording is not  
13 permitted.

14 All right. Preliminaries out of the way.

15 Now I'm going to go through the list of folks  
16 that requested a live telephone line from CourtCall and  
17 those are the folks that I assume intended to make some  
18 kind of appearance and in the first instance I'm going to  
19 skip over anybody that's listed as having requested a  
20 listen-only line, but I will stop at the end and make sure  
21 everybody that wants to make an appearance has made an  
22 appearance. When I call your name, please go ahead and  
23 make your appearance and say who you are, who you  
24 represent.

25 We'll start with Mr. Austin.

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1 MR. AUSTIN: Good morning, Your Honor. This is  
2 Anthony Austin from the California Attorney General's  
3 Office appearing on behalf of the California Department of  
4 Toxic Substances Control, the creditor and --

5 THE COURT: Very good.

6 MR. AUSTIN: -- interested party.

7 THE COURT: Thank you.

8 Mr. Beall.

9 MR. BEALL: Good morning, Your Honor. William  
10 Beall, Beall & Burkhardt, on behalf of GRL, LLC and GLR,  
11 LLC on various items. Thank you.

12 THE COURT: Okay. GLR and GRL. All right.

13 Ms. Clough.

14 MS. CLOUGH: Good morning, Your Honor. Alicia  
15 Clough from Loeb & Loeb on behalf of the California State  
16 Lands Commission.

17 THE COURT: Very good.

18 Mr. Cohen.

19 MR. COHEN: Good morning, Your Honor. Marc Cohen  
20 from Loeb for the State Lands Commission on their claim.

21 THE COURT: Very good. All right.

22 Mr. de Leest:

23 MR. de LEEST: Good morning, Your Honor. Aaron  
24 de Leest, Danning Gill Israel & Krasnoff, for the Trustee.

25 THE COURT: Okay. Mister -- and I apologize if I

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1 mispronounce it -- Dellefave.

2 MR. DELLEFAVE: Good morning, Your Honor.

3 Nicholas Dellefave, Enterprise Counsel Group, on behalf of  
4 Jane Adams and John Adams, Trustee of the Jane Adams Family  
5 Trust.

6 THE COURT: Oh, very good. All right.

7 Mr. Fingerhood.

8 MR. FINGERHOOD: Good morning, Your Honor. Karl  
9 Fingerhood with the U.S. Department of Justice,  
10 Environmental Enforcement Section on behalf of the U.S. EPA  
11 and U.S. Coast Guard.

12 THE COURT: Very good.

13 Mr. Fisher.

14 MR. FISHER: Good morning, Your Honor. Don  
15 Fisher for defendant Croian Cross Holdings, LP. It's a  
16 defendant in the Trustee's adversary proceeding.

17 THE COURT: Very good. All right.

18 Ms. Goetz.

19 MS. GOETZ: Good morning, Your Honor. Gisele  
20 Goetz with Hollister & Brace, appearing on behalf of  
21 Chamberlin Oil, LLC, lessors.

22 THE COURT: Very good.

23 Ms. Grant.

24 MS. GRANT: Good morning, Your Honor. Karen  
25 Grant on behalf of BUGANKO and also Janet Ganong,



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1 creditors.

2 THE COURT: Very good. Thank you.

3 Mr. Holman.

4 MR. HOLMAN: Brian Holman, Musick Peeler &  
5 Garrett, on behalf of Bradley Land Company.

6 THE COURT: Okay.

7 Ms. Hunckler.

8 MS. HUNCKLER: Yes, this is Tracy Hunckler and I  
9 still have some to be at hearing listen only. I'm here as  
10 an interested party because I practice in this area but I'm  
11 not here on behalf of any client.

12 THE COURT: Very good. Thank you. All right.

13 Mr. Israel.

14 MR. ISRAEL: Good morning, Your Honor. Eric  
15 Israel of Danning Gill Israel & Krasnoff, LLP, attorneys  
16 for the Trustee.

17 THE COURT: All right.

18 Mr. Izakelian.

19 MR. IZAKELIAN: Good morning, Your Honor. Razmig  
20 Izakelian of Quinn Emanuel Urquhart & Sullivan on behalf of  
21 GIT, Cat and GCL.

22 THE COURT: Very good. Thank you.

23 Mr. Jones.

24 MR. JONES: Good morning, Your Honor. Evan Jones  
25 of O'Melveny & Myers on behalf of UBS.

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1 THE COURT: All right. Mr. Langberg.

2 MR. LANGBERG: Good morning, Your Honor.

3 Mitchell Langberg, Brownstein Hyatt Farber Schreck, on  
4 behalf of creditor and adversary defendants several: Lance  
5 Brown, Trustee of the second Brown Trust; Jerome Brevoort  
6 Dwight, Lela Minturn Dwight, Jonathan Ashley Dwight, John  
7 A. Feliciano, Trustee of the family Feliciano Revocable  
8 Trust, Louise H. Feliciano, trustee; and the Louise H.  
9 Feliciano Revocable Trust; Adam B. Firestone; Katherine S.  
10 Hanberg, William Hanberg, Alice Sedgwick, deceased, her  
11 estate by personal representative Susanna Sedgwick,  
12 trustee, and Alice Sedgwick Wohl.

13 THE COURT: Okay. All right.

14 Mr. Litvak.

15 MR. LITVAK: Good morning, Your Honor. Pachulski  
16 Stang Ziehl & Jones on behalf of the Creditors' Committee.  
17 I'm also appearing by video. Can you see me as well?

18 THE COURT: I can. You're coming through loud  
19 and clear, both physically and audio.

20 MR. LITVAK: Thank you.

21 THE COURT: Mr. McConnell.

22 MR. MCCONNELL: Yes, good morning, Your Honor.  
23 Michael McConnell, the Chapter 11 Trustee.

24 THE COURT: Good morning.

25 Mr. Namba.

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1 MR. NAMBA: Good morning, Your Honor. Jerry  
2 Namba for CMT, LLC.

3 THE COURT: Very good. Okay.

4 Mr. Olivares.

5 MR. OLIVARES: Good morning. Mayer Olivares on  
6 behalf of GIT, GTL and Cat.

7 THE COURT: Thank you. All right.

8 Mr. Renwick.

9 MR. RENWICK: Yes, Your Honor. Edward S. Renwick  
10 of Hanna & Morton appearing for the Goodwin "A" Mineral  
11 Owners Group, the Presson Vera Rivera OC Land Group,  
12 Mr. and Mrs. Frank Boisseranc, and Mr. Waldo A. Gillette.

13 THE COURT: Thank you.

14 Ms. Rhim.

15 MS. RHIM: Good morning, Your Honor. Alexandra  
16 Rhim, Hemar Roussio & Heald, on behalf of Laor Associates  
17 and Guarantee Royalties.

18 THE COURT: Okay. That's how you pronounce it,  
19 huh? Laor. All right.

20 Mr. Schulman.

21 MR. SCHULMAN: Good morning, Your Honor. George  
22 Schulman, Danning Gill Israel & Krasnoff, on behalf of the  
23 Trustee.

24 THE COURT: Mr. Shectman.

25 MR. SHECTMAN: Good morning, Your Honor. Zev

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1 Shectman of Danning Gill Israel & Krasnoff on behalf of the  
2 Trustee.

3 THE COURT: Ms. Singh.

4 MS. SINGH: Good morning, Your Honor. Sonia  
5 Singh of Danning Gill Israel & Krasnoff, for the Chapter 11  
6 Trustee.

7 THE COURT: All right.

8 Mr. Skillman.

9 MR. SKILLMAN: Good morning, Your Honor. Tim  
10 Skillman with CR3 Partners and chief operating officer for  
11 the Trustee.

12 THE COURT: Mr. Spence.

13 MR. SPENCE: Good morning, Your Honor. Ross  
14 Spence on behalf of Santa Barbara County and related  
15 parties.

16 THE COURT: And last, but not least, Ms. Tomasco.

17 MS. TOMASCO: Good morning, Your Honor. This is  
18 Patty Tomasco with Quinn Emanuel. I'm here on behalf of  
19 California Asphalt Production, Inc., GTL-1, LLC and GIT,  
20 Inc.

21 THE COURT: Very good.

22 All right. Now, before I move on is there anyone  
23 that would like to state their appearance for the record  
24 that did not get a chance to do so?

25 MR. MARTINEZ: Good morning, Your Honor. Vincent

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1 Martinez. I believe I was listed for live appearance for  
2 the telephone.

3 THE COURT: Okay.

4 MR. MARTINEZ: And I --

5 THE COURT: I don't know what happened but,  
6 Mr. Martinez, why don't you tell us who you represent,  
7 please.

8 MR. MARTINEZ: Yes. Good morning again and  
9 Vincent Martinez of the law firm Twitchell & Rice. I  
10 represent five parties: Adam Family Trust; Candace  
11 Evenson; Escolle Tenants in Common; Bognuda Family Trust;  
12 and the last is Morganti Ranch, a limited partnership.

13 THE COURT: Very good. Thank you.

14 All right. There was someone else that wanted to  
15 make their appearance. And here -- someone else that  
16 wanted to make their appearance that didn't get to? Okay.  
17 All right, then. All right.

18 It's off camera, but if you can imagine the court  
19 bench is covered wall to wall with paper so I can find  
20 everything, hopefully, when we need to.

21 All right. Look, we have a lot on the calendar  
22 and it seems to me that there are -- the best way to do  
23 this is try to field with the matters that involve the most  
24 number of people first so that when they're done if they  
25 choose to leave -- and I'll just say in advance, if you're

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1 done, you're free to leave without asking for my  
2 permission. Some people are more formal in telephonic  
3 conferences. You can just leave. You don't have to ask  
4 for permission.

5 But I'm going to try to do the things that I  
6 again think involved the most people first. And so I'm  
7 going to go slightly out of order from what the -- slightly  
8 out of order from what you see on the Court's calendar.  
9 And the way I plan to proceed is I'm -- it seems to me  
10 that, number one, which is the motion seeking relief with  
11 respect to certain surface leases, as well as oil and gas  
12 leases, is in many ways related to the adversary proceeding  
13 that's seeking declaratory relief as to the oil and gas  
14 leases. And many of the folks that are on today for the  
15 status conference in that adversary are also on because  
16 they filed an objection to the motion in #1.00.

17 So I'm going to deal with the motion of #1.00 and  
18 then probably the adversary status conferences in the  
19 declaratory action and related matters first and then work  
20 my way backwards in some way or another to the other  
21 things. I think that will get most of you out of here  
22 sooner.

23 All right.

24 MR. JONES: Your Honor?

25 THE COURT: Yes.

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1 MR. JONES: I apologize, Your Honor. This is  
2 Evan Jones on behalf of UBS. We had discussed with the  
3 Trustee's counsel the financing motion seeks money that we  
4 understand the Trustee would like to receive today to meet  
5 payroll and so we had discussed with the Trustee and  
6 understand they agree that that matter might be taken up  
7 first. As Your Honor knows, we're trying to advance money  
8 on the East Coast and we're worried about the wire transfer  
9 window closing.

10 THE COURT: Okay. All right. I'm willing to  
11 take things out of order.

12 Mr. Israel.

13 MR. ISRAEL: Yes, Your Honor.

14 THE COURT: Mr. Israel, by the way, I see that  
15 you've logged into the video call but I can't see you. I  
16 don't know if you've turned your camera on or clicked the  
17 button that said, go ahead and share my video. It's not  
18 essential that I see you because I can hear you, but if it  
19 was your intention to be seen, I just want you to know that  
20 I can't see you.

21 MR. ISRAEL: Thank you, Your Honor. Yes. When I  
22 logged on I could see several people and when I clicked the  
23 button at the bottom that currently has a video with a  
24 slash through it, it says my camera isn't set up, so --

25 THE COURT: Okay. All right.

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1 MR. ISRAEL: -- I am dressed up on the assumption  
2 that I was going to be seen, but --

3 THE COURT: All right. No problem.

4 MR. ISRAEL: If you can hear me okay, then I can  
5 see you and several -- you know, the other parties that  
6 have videos.

7 THE COURT: Okay. I'd like to --

8 MR. ISRAEL: Okay. Your Honor --

9 THE COURT: Obviously you're the moving party and  
10 this is on shortened time.

11 I did see Mr. Litvak's pleading, which was filed,  
12 I think, before you had filed the latest emergency motion.  
13 We'll give him an opportunity to speak in a few minutes. I  
14 assume that his objection to the latest revision of the  
15 budget is similar to his objection to this latest DIP  
16 motion. So I'd like you to start by addressing that and  
17 I'll say to anybody else that wants to make oral objection  
18 to this post-petition financing motion, I will in a few  
19 moments ask you to speak up and tell me who you are because  
20 this matter is on shortened time.

21 But let me start with the Trustee and -- and  
22 what's your -- what's your response? I mean, I thought we  
23 had established early on that I expected the fees of the  
24 committee going forward to be accounted for in the post-  
25 petition budget. I understand from Mr. Litvak's pleading



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1 that he's even -- you know, his clients have even moderated  
2 what I had said was the amount I thought appropriate and  
3 agreed to accept something less, at least for a couple  
4 months, and yet they were carved out of the budget. So  
5 what's going on?

6 MR. ISRAEL: Thank you, Your Honor. First of  
7 all, I'd like to thank Your Honor for hearing this on an  
8 emergency basis, this interim hearing. Ongoing  
9 negotiations over the terms of any additional borrowings  
10 and the Trustee's decision about how to proceed with this  
11 case has since been overtaken by events largely outside of  
12 everyone's control.

13 The budget that -- that is submitted is a very  
14 short-term budget. It actually has no carveout for -- goes  
15 through April 24th. It has no carveout for professionals,  
16 including the professionals of the Trustee at this time.  
17 We are in negotiations with UBS on April. I have confirmed  
18 that the Committee's budget for -- set aside for March was  
19 made and sold for \$35,000, but no set-aside has been made  
20 as of this time and it's not in the current budget. Again,  
21 this goes through the end of April and we are in  
22 discussions with UBS on that matter.

23 This is really a bare bones budget just to  
24 continue operations while UBS decides whether it can make  
25 further advances, whether it will make further advances.

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1 THE COURT: Right.

2 MR. ISRAEL: And for the Trustee to decide what  
3 to do.

4 I know the Trustee wanted to make a status report  
5 and I don't know this might be a good time for the Trustee  
6 to make a brief supplemental report on what the recent  
7 events in the case -- in the case. Many of them are set  
8 forth in the motion, but I know we just filed that  
9 yesterday, so is this a good time for the Trustee to make  
10 that little presentation?

11 THE COURT: All right. Well, okay. Yeah. I  
12 really am sensitive to the fact that we have a virtual  
13 courtroom for people who may or may not be interested in  
14 this, but why don't you go ahead and then I'll hear from  
15 Mr. Litvak.

16 But before I do that, let me just ask you, so --  
17 from your perspective. I'll hear from Mr. Litvak in a  
18 minute. Your position is that the funds, that basically  
19 \$30,000 in March was set aside for the Committee?

20 MR. ISRAEL: Yes. And -- and that they didn't --

21 THE COURT: Okay.

22 MR. ISRAEL: -- use all of it. My understanding  
23 was that there was 10,000 left and UBS's position is that  
24 the \$10,000 would be available for use in April without  
25 prejudice to whatever the negotiations result in with

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1 carveout for the Trustee's professionals, as well as from  
2 Committee.

3 THE COURT: Okay. And have there been any sums  
4 set aside for any estate professional under any budget,  
5 whether it's the one that was agreed to pursuant to the  
6 supplemental extension authority or in this motion? Is  
7 there any money that anybody is being asked to set aside  
8 for state professionals for April?

9 MR. ISRAEL: No, not as of this time.

10 THE COURT: Okay. All right. Good. I mean,  
11 look. UBS doesn't have to put any more money into this.  
12 You know, doesn't have to loan any additional money. My  
13 chief concern, as I think I articulated early on in our  
14 financing hearings, was that there is some measure of  
15 fairness. And that to the extent there was money being  
16 lent in order to make a Chapter 11 case here work that, you  
17 know, the Committee still has a statutory role and it still  
18 has to be provided for, but if everybody is being treated  
19 the same at the moment, then maybe it's not -- you know,  
20 maybe it's not a problem. You know, we'll hear from  
21 everybody in a minute. But let me start -- or at least go  
22 to Trustee McConnell, as you requested. And, Mr.  
23 McConnell, you're welcome to give everybody an update.

24 I will say to everybody, this is not testimony.  
25 He's not being sworn in. At least not yet. And -- but at

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1 these hearings and this is also a Chapter 11 status  
2 conference, I do welcome the Trustee to tell me in his own  
3 words what's going on. And so I think it's helpful to  
4 everybody.

5 So go ahead, Mr. McConnell.

6 MR. MCCONNELL: Yes, Your Honor. Thank you very  
7 much. And I'll be brief because I know there are several  
8 matters on the docket and there's a lot of attorneys on the  
9 phone, but I just want to make some general comments.

10 First of all, Your Honor is here and everybody  
11 else is aware there's been incredible change in the  
12 environment for the production and sale of oil and gas  
13 since the last time we were together. However, I can  
14 report that right now we have resumed operations on several  
15 of our properties in the San Maria Valley, the Bell Ridge  
16 leases in Kern County and the Richmond Estone (phonetic)  
17 unit in Orange County.

18 In addition, since the last time we were together  
19 we have made a number of capital improvement on the leases  
20 that brought several wells back into production that had  
21 been inoperative and we have obtained interim authority  
22 from the Fish & Game Commission to operate all of our wells  
23 subject to additional paperwork that has to be done in the  
24 near term.

25 In addition, we have obtained a 90-day extension

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1 from the Air Pollution and Control District of Santa  
2 Barbara for use of certain non-compliant burners in our  
3 heater treaters on the properties. The regulations  
4 concerning what standards we had to meet changed January  
5 1st of this year. We applied for a variance to allow us to  
6 continue to produce on these leases until we could get  
7 replacement equipment. We were granted an interim variance  
8 and a final variance for the full 90 days which will expire  
9 in June.

10 Heater treaters, Your Honor, are a way of drying  
11 the crude to make it ready for transport to the refineries.  
12 We are having an average daily production from all of our  
13 fields of about 400 to 600 barrels a day. We have  
14 contracts through May on our Bell Ridge and redo -- or  
15 Richmond Estone unit leases, but our contracts in the Santa  
16 Maria Valley expire at the end of this month. Because of  
17 what you're witnessing in the press, demand for oil and gas  
18 has dropped precipitously and accordingly prices are going  
19 down with it. And the fact we're all facing is that a  
20 number of the refineries are not even taking crude at this  
21 time because they have enough in storage to last in a  
22 significant period of time.

23 So we are -- our primary purchaser is Phillips  
24 66. We are continuing discussions with them about  
25 obtaining hopefully some contracts in the month of May, but

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1 right now our Phillips 66 contracts for Santa Maria Valley  
2 expires the end of this month and we are not alone in that,  
3 Your Honor. Many of the producers in the Santa Maria  
4 Valley are either voluntarily shutting down their  
5 production or having to shut production because of the same  
6 advance that the refineries are simply not taking crude  
7 orders at this time.

8           So that's pretty much on an operational level.  
9 In addition, Your Honor, we had engaged Ten Oaks Advisory  
10 Services in Dallas, Texas to explore potential sales of all  
11 of the oil and gas assets of the company, as well as  
12 individual and crude leases. They have been soliciting  
13 offers for those properties. None of their offers at this  
14 time have been acted upon or even with -- the counters  
15 because we're in a very distressed situation.

16           THE COURT: Right.

17           MR. MCCONNELL: With re --

18           THE COURT: So -- I'm sorry. Go ahead.

19           MR. MCCONNELL: Okay. Two other points, Your  
20 Honor. With respect to the regulators, we had been in  
21 daily contact with the Air Pollution Control District in  
22 Santa Barbara County and have been in constant contact with  
23 all of the other regulators on oil and gas in the state of  
24 California, as well as the federal government.

25           As the Court may remember, at the time I took

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1 over as trustee we had 1400 notices in violation that had  
2 to be dealt with. We have reduced that number  
3 significantly and we are in cooperation with the Air  
4 Pollution Control District out of State of California  
5 regarding those notices of violation and also certain  
6 pending litigation.

7 Finally, Your Honor, as you know from the docket,  
8 we have been in constant communication with Union Bank of  
9 Switzerland regarding continued financing for me as trustee  
10 in this incredibly difficult environment we're dealing with  
11 right now. You can imagine that there are many people that  
12 are involved in this process. We have before you a motion  
13 for the use of cash collateral and for additional  
14 financing, which I need to continue operations.

15 So that's a general overview, Your Honor.

16 THE COURT: Okay. I still have one question.  
17 You mentioned the production right now of about 4 to 600  
18 barrels a day. At one time I recall you said -- and maybe  
19 it was not actual production but capacity was about 1,000.  
20 And I understand it was a different world just, you know, a  
21 couple months ago, but that you were doing things to try to  
22 expand the production capacity of the debtor's assets by  
23 about 50 percent.

24 The 4 to 600 barrels is that -- is that -- you  
25 know, why isn't that 1,000? Is that because you don't --

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1 there's not enough demand so it doesn't make sense to  
2 operate at full capacity or have you learned something new  
3 about these assets? Is 4 to 600 really just like a  
4 capacity or have you elected to produce at that rate?

5 MR. MCCONNELL: Your Honor, that present 4 to 600  
6 barrels a day is a reflection of a number of factors  
7 including demand, needed capital improvements on the  
8 properties, et cetera. Certainly these properties can  
9 produce what certain improvements are made at a 1500 to  
10 1600 barrel capacity. Right now we have no buyers for that  
11 capacity. We have ordered certain capital equipment that  
12 would allow us to get to those levels, but we have not  
13 installed it yet and some of it we have simply put on hold  
14 because of the present pricing environment.

15 So 4 to 600 is what we're doing now, but  
16 certainly with some additional improvements we can get up  
17 to the 1600 barrel a day what I had mentioned earlier.  
18 It's all a function of price --

19 THE COURT: Right.

20 MR. MCCONNELL: -- at the end of the day, Your  
21 Honor, and demand.

22 THE COURT: Right. Okay. Is it all -- if it  
23 made economic sense to do so. Okay. All right. I  
24 appreciate that.

25 Okay. So let's get back to the financing motion.



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1 And Mr. Israel, before I turn to the others, is there  
2 anything, any significance differences about the terms of  
3 this request in post-petition financing from the last one?

4 MR. ISRAEL: No, Your Honor. There's very, very  
5 limited changes. There's one extension of the draw period  
6 from April 4th to April 24th. There is another optional  
7 two weeks -- up to two weeks, up to \$500,000 term that  
8 was -- that was part of the original credit agreement and  
9 one or two of the prior amendments.

10 And there was one -- the other change was a  
11 milestone for filing the summary judgment motion in the 365  
12 adversary proceeding and there was an extension from  
13 April 20th to, I believe, it was May 4th, so we get about a  
14 two-week extension to file that summary judgment motion.  
15 It's just to our benefit.

16 So again, it's a very bare bones short-term  
17 extended budget. And, in fact, part of it is to obtain  
18 permission to -- for -- to advance funds that all -- the  
19 Trustee already has and are to be advanced but still within  
20 the limits of the fourth amendment -- I guess the fifth  
21 amendment that was already agreed and the fifth amendment  
22 is the one that was -- that notice was just served on.

23 I will say that -- a couple things. One, we did  
24 serve the same parties with telephonic notice by noon  
25 yesterday as directed by the Court. We filed Mr. de

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1 Leest's declaration. He's on the -- he's on the call, but  
2 I believe it's docket #945.

3           Since yesterday we had one minor amendment to the  
4 sixth -- to the sixth amendment to the credit agreement and  
5 the minor amendment, it's been filed. It's docket #948  
6 this morning in redline. And the only substantive change  
7 was, again, in the -- to benefit the Trustee and for the  
8 convenience of UBS and the Trustee that the advance could  
9 be made if the Court approved it on -- it doesn't have to  
10 wait for the order to be entered or at least they have the  
11 option not to have to do that so that we could, if Your  
12 Honor approves it, that we -- we weren't sure what the  
13 procedure for immediately entering an order was. And  
14 anyway, so that's -- the redline was docket #940.

15           THE COURT: Well, that's how I've answered my  
16 last --

17           MR. ISRAEL: Your Honor --

18           THE COURT: How it answers my last question,  
19 which is, how come an interim order on this emergency  
20 motion which I'm being asked to deal with to address an  
21 East Coast wire deadline has no lodged order? I mean, no  
22 lodged order. I would have been happy, you know, if --  
23 assuming I grant it and it needed to be entered right away,  
24 I could have arranged to have it entered right away but I  
25 can't with no lodged order, so that's that.

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1 MR. ISRAEL: Your Honor --

2 THE COURT: Let me -- yeah, Mr. Israel?

3 MR. ISRAEL: Yes, I think Mr. de Leest

4 (indiscernible) --

5 MR. de LEEST: (Indiscernible) here.

6 THE COURT: I'm sorry. Whoever is speaking, I  
7 can't hear you.

8 MR. de LEEST: I apologize, Your Honor. It's  
9 Mr. d Leest. I will lodge the order. It had -- and I can  
10 do it while we're on the call. I wanted to make sure that  
11 the Court was able to and willing to approve it before I  
12 did so.

13 THE COURT: Yeah, okay. All right.

14 Mr. Litvak, you represent the Official Committee  
15 of Unsecured Creditors. Let me hear from you now, please.

16 MR. LITVAK: Yes, Your Honor. Max Litvak,  
17 Pachulski Stang Ziehl & Jones on behalf of the Creditors'  
18 Committee. Your Honor, we would have no objection to the  
19 additional financing that's requested. The Court  
20 referenced the objection that we had filed with respect to  
21 the budget, the prior budget for this file. And it had not  
22 been provided to us in advance, so we were a little  
23 surprised to see it when I saw it filed, but it didn't have  
24 anything in there for us.

25 Now we've got a new further financing motion, new

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1 budget. Also, there's nothing in there for us but I also  
2 understand there's nothing in there for the Trustee  
3 professionals as well.

4 We have gone back and looked at our bills and, as  
5 the Court noted, we are willing to take a reduction on our  
6 further budgeted amounts in this case due to the  
7 unprecedented situation certainly facing the oil industry  
8 generally as well as this debtor and this Trustee.

9 The -- we have had no certainty, Your Honor, that  
10 the \$35,000 that the Court had ordered to be provided for  
11 the Committee was, in fact, missed for March. We had  
12 inquired about that on more than one occasion, but not  
13 gotten any confirmation from the Trustee or the counsel and  
14 then we did now get that confirmation prior to this  
15 hearing.

16 So with that additional \$35,000 that's more than  
17 enough frankly for the amount of fees that we've incurred  
18 in March and we are prepared to roll that over to April  
19 without any further funding in April, Your Honor. I would  
20 just ask that to the extent that amounts have been funded  
21 over the last few months and we have not used the full  
22 amount that's been funded on our fees that we be authorized  
23 to apply any further fees that we may incur against  
24 those -- against that -- that amount. And we have come in  
25 under budget, Your Honor, for the last few months -- couple

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1 months at least, so we do have some room and I think we can  
2 utilize that for some period of time.

3 But certainly once we get later into May and  
4 June, depending on what is happening in the case and how  
5 involved we are, we're going to need some further funding,  
6 but it's not an urgent situation that needs to be addressed  
7 right now with that clarification that we can roll over  
8 effectively on these amounts in subsequent months.

9 THE COURT: Okay. All right. I appreciate that,  
10 Mr. Litvak. I was getting some feedback. I just muted  
11 you --

12 MR. LITVAK: (Indiscernible) -- yes.

13 THE COURT: (Indiscernible) - if that had  
14 anything to do with it. So hopefully we figured out how to  
15 fix that. All right.

16 Before I turn to Mr. Israel again and -- or  
17 Mr. Jones who usually likes to speak in favor of financing  
18 that his client is providing, is there anyone that wants to  
19 be heard in opposition to this latest emergency post-  
20 petition financing motion?

21 MR. BEALL: Your Honor --

22 MS. TOMASCO: Your Honor, this is Patty Tomasco.

23 THE COURT: Okay. Hold on. Ms. Tomasco. Who  
24 else?

25 MR. BEALL: William Beall, Beall & Burkhardt.

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1 THE COURT: Okay. All right. Let me start with  
2 Ms. Tomasco, please.

3 MS. TOMASCO: Your Honor, on behalf of GIT and  
4 its subsidiaries, we express the same concern as the  
5 Committee does. Insofar as there are administrative  
6 expenses that have been incurred and have not been paid, we  
7 just reserve all rights.

8 THE COURT: Okay. All right. Mister -- is that  
9 it?

10 MS. TOMASCO: That's it.

11 THE COURT: Okay. All right. Mr. Beall.

12 MR. BEALL: Yes, Your Honor. The problem is that  
13 there's nothing in the budget to pay royalties of any  
14 party, including that of mine and if you look at the motion  
15 it seems reasonably likely, perhaps better than 50/50. But  
16 as of May 1st there's no money at all. This case is  
17 Chapter 7 and yet they're collecting oil revenues from  
18 April. They need to have some provision to pay the  
19 royalties, not just to my client but to all those other  
20 royalty claimants that are out there, when there's no money  
21 or if there's no money as of May 1st.

22 And in addition, Your Honor, I have consistently  
23 requested from counsel for the Trustee evidence that the  
24 escrow account which funded from my client as of March 1st  
25 and April 1st and no matter how many times I ask, I get no

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1 response whatsoever. So I do not believe that the escrow  
2 account has been funded as of March 1st or April 1st, let  
3 alone making provision for the royalties during the month  
4 of April, which would be due May 1st.

5 THE COURT: Okay. All right. Mr. Israel, I want  
6 to hear from you. We -- I think we've, you know,  
7 established that -- well, let me back up. I shouldn't say  
8 "established."

9 This concern has been raised before that oil is  
10 being taken out of the ground, that royalty owners under  
11 California law have a property interest in that oil that  
12 commingles with other people's oil and then sold. But I  
13 have always been comforted by the fact that the budget was  
14 setting aside and placing in a reserve the royalties  
15 attributable to oil being taken from ground and sold. And  
16 if the budget -- if the budget does not provide that then I  
17 think we may have a problem, at least to the extent that  
18 the debtor seeks to operate and continue to sell oil, part  
19 of which is the property interest of the royalty holders.

20 MR. ISRAEL: Thank you, Your Honor --

21 THE COURT: What's your response?

22 MR. ISRAEL: Yes, Your Honor. The Trustee has  
23 been paying royalties. Current -- current there are delays  
24 by the district per counties, that there are offsets to  
25 calculate what the royalties are. I believe that the

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1 Trustee just signed a check yesterday. I would ask --

2 THE COURT: Okay. I'm not -- I'm not  
3 concerned --

4 MR. ISRAEL: -- a number of --

5 THE COURT: -- about the -- I want you to  
6 start -- talk about April. I mean, we've got a separate  
7 issue with Mr. Beall's client because those are supposed to  
8 go in a reserve for the time being and aren't being paid.  
9 So his clients are in a special situation, have been in a  
10 special situation for much of the case.

11 But respond to his allegation, please, that the  
12 budget for April, which is -- you know, it's not just a  
13 formula for advances by the lender, but it's a cash flow.  
14 It's a cash collateral budget as well. Does it not provide  
15 for the payment and/or reserve of that portion of the oil  
16 that is taken out of the ground in April and sold?

17 MR. ISRAEL: Your Honor, the payment of royalties  
18 is paid in the following month. So what would be paid in  
19 April would be for the month of March, if I recall.  
20 Mr. Skillman is on the phone. He can confirm, but I would  
21 note that his budget doesn't go through the end of April,  
22 so there's -- there -- there's -- it's envisioned that the  
23 payments would be in that last week of April.

24 Mr. Skillman, can you --

25 THE COURT: But isn't that -- isn't that --



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1 MR. ISRAEL: -- verify?

2 THE COURT: -- a concession? Isn't that a  
3 concession by you that the royalty holders are not  
4 adequately protected for the use of their property? I  
5 mean --

6 MR. ISRAEL: Your Honor, that --

7 THE COURT: -- what if the case tanks? What if  
8 the case tanks and there is no budget and there is no money  
9 left and you had taken their oil and sold it and turned it  
10 into money and spent that money? How are they protected?

11 MR. ISRAEL: Your Honor, the history and course  
12 of this business and I'm told in general in the oil  
13 industry is that we don't even get paid for March sales  
14 until April 20th. That's normally the true-up date for the  
15 prior month and --

16 THE COURT: Okay.

17 MR. ISRAEL: -- then from that point --

18 THE COURT: And that was fine.

19 MR. ISRAEL: -- it (indiscernible) --

20 THE COURT: That was fine. When UBS was putting  
21 money into this thing, okay, when they were making a  
22 commitment that was more than a couple weeks, okay, that  
23 was -- I was comfortable with that. You just had the  
24 Trustee give me a report to tell me that things were bad,  
25 okay, that he was having trouble finding people to buy the

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1 oil.

2 And now I've got this budget and you're telling  
3 me, well, the budget really isn't fair to the royalty  
4 holders because the budget doesn't include the last day of  
5 the month. Well, what if the last day of the month doesn't  
6 come? What if the money is all gone and you have taken  
7 their oil and sold it and spent the money? I don't think  
8 they're adequately protected.

9 Sorry. I know I interrupted you, but I just --  
10 you're telling me things I know. I know what the timing  
11 is. This was an issue in every other one of our early  
12 hearings where we had objections. I'm familiar with the  
13 timing, but I was comfortable because we had -- we had  
14 money coming in from UBS asked, you know, the end of the  
15 budget whether there was good reason to believe that they  
16 would last and things were looking up.

17 Now things are looking down and so I think we  
18 need to be careful and make sure that the property that is  
19 being used, that is the oil that belongs to royalty  
20 holders, the use of that property is adequately protected.  
21 So I'm just not convinced that that's the case. Maybe Mr.  
22 Skillman -- it sounds like you want to hand it over to  
23 Mr. Skillman to address the Court and that's fine, but --

24 MR. SKILLMAN: Thank you, Your Honor. Tim  
25 Skillman on behalf of the Trustee. Proceeds from oil sales

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1 in January have been distributed or credited to the escrow  
2 royalty reserve account. And as Mr. Israel said, proceeds  
3 for sales of oil for February were credited to the escrow  
4 royalty reserve account and are being disbursed as we  
5 speak. The checks were signed yesterday.

6 Proceeds of oil sales in March will be received  
7 on April 20th at which time we would credit 13 percent of  
8 those receipts to the escrow royalty reserve account  
9 pending accounting. The accounting takes a month for us to  
10 do and it's partly because we're selling crude through  
11 Texican. In February we sold some crude through another  
12 neighbor who processed it for us. And in March they're  
13 selling oil through Texican and we're also selling it  
14 through another neighbor who in turn sells it to P 66.

15 When we get the money, the money goes into the  
16 escrow royalty reserve account which currently stands at  
17 \$109,285. That money is reserved for the royalty interest  
18 donors and will not be disbursed. In fact, even though we  
19 have been short on cash because of the immediate funding  
20 need, we have not touched any of the reserve accounts, the  
21 royalty interest donors, surface rents or the UCC  
22 professionals.

23 So I would argue that they are more than  
24 adequately secured. In the event this deal goes sideways,  
25 that money is there and is not sufficient to pay what we

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1 believe is contractually owed currently through the month  
2 of February. And when we get sales from March, we'll put  
3 13 percent of those proceeds into the escrow account for  
4 March sales. They will still be exposed from April sales,  
5 though, and I don't know that there's a solution for that  
6 at this time.

7 (Parties speaking simultaneously.)

8 THE COURT: Well, you could sock away money for  
9 those. I mean, it's one solution. The other solution I  
10 guess is if you're -- if your lienholders were to  
11 acknowledge -- and maybe they have previously and I just --  
12 I don't know where in this stack of paper it is. I mean,  
13 maybe if UBS acknowledged that it can't take a lien and  
14 property that doesn't belong to them and that the funds  
15 that are delivered from royalties for oil sold in April are  
16 going to be available to a party whose oil was sold. Maybe  
17 that would solve it.

18 Mr. Jones?

19 MR. JONES: Thank you, Your Honor. Your Honor,  
20 certainly UBS acknowledged that when the first financing  
21 for the Trustee was done that we can't take a lien on  
22 something that the Trustee doesn't own. So if it is true  
23 that there are funds that are not owned by the estate or  
24 the Trustee, UBS doesn't have a lien on them. I do  
25 understand, as Mr. Skillman says, that there are reserves

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1 for the royalty taken each month and that those are in the  
2 current budget.

3           Your Honor, if I can step back for a moment, we  
4 certainly agree that it is appropriate to take up the  
5 Committee's objection to the fifth amendment today to get  
6 guidance from the Court on the Committee fees going  
7 forward. I believe that the discussion since the objection  
8 is filed has satisfied Mr. Litvak that the \$35,000 that the  
9 Court ordered be set aside for Committee fees in March was,  
10 in fact, set aside. I think that Mr. Israel has confirmed  
11 that and I've told Mr. Litvak that I will state on the  
12 record that was ordered by the Court. It must be done and  
13 my understanding, although I don't have personal knowledge,  
14 but it was, in fact, done.

15           If I understand what Mr. Litvak has said, the  
16 Committee is agreeable under these extraordinary  
17 circumstances and I won't go into detail on those to have  
18 its fee allocation for April be a roll-over of the funds  
19 that have already been set aside and which have not been  
20 used for the Committee fees and we applaud the Committee  
21 for that, Your Honor.

22           As we said in our response, we certainly  
23 understand the Court's order was \$35,000 on a monthly  
24 basis. We submit that that was in circumstances that are  
25 no longer applicable and we appreciate the willingness of

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1 the Committee, if I understand Mr. Litvak correctly, to  
2 accept a roll-over of the allocations that have already  
3 been reserved for the month of April.

4 We all understand that there are going to have to  
5 be very difficult decisions made about what happens after  
6 April 24th. And I do want to emphasize -- Your Honor asked  
7 a question and I want it to be very clear, what does this  
8 amendment do? This amendment does not increase the  
9 availability to the Trustee. That number was set in the  
10 fifth amendment.

11 The fifth amendment by its terms, which have been  
12 authorized by the Court's earlier order, permitted the  
13 Trustee and UBS to agree to extend the time period in which  
14 that amount could be drawn and for better or worse that  
15 time period closed. And so what the Trustee is asking for  
16 today is permission to extend -- to keep the window open,  
17 to draw the approximately \$500,000 that is already  
18 authorized, but the window had closed. And, Your Honor, I  
19 can assure you there were serious discussions over whether  
20 such an amendment was even material and required the Court  
21 approval. We decided under the circumstances it was  
22 appropriate to cut very square corners. And so what we're  
23 asking the Court for today is permission to advance the  
24 \$500,000 that was already authorized by the fifth  
25 amendment.

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1           Your Honor, Mr. Israel mentioned we made a last-  
2 minute change. The document not surprisingly said we  
3 needed an entered order to make this advance since we  
4 agreed we might cut square corners. Last night with the  
5 concern about just what the process for walking an order  
6 through is -- and, Your Honor, I apologize. I thought that  
7 the Trustee had uploaded a draft order. But in any event,  
8 we changed the agreement last night to permit UBS if it's  
9 satisfied by oral approval of the Court today to go ahead  
10 and make this advance. We understand the Trustee needs the  
11 money now.

12           And so we would suggest that it is appropriate  
13 for the Court to approve the sixth amendment. We would  
14 make clear in the order that the reserve that has been set  
15 aside for the Committee could be rolled forward to the  
16 month of April and obviously if it is -- there is further  
17 financing and, as the Trustee said, the parties are  
18 in intense discussions on what the best course for this  
19 case is and it is not a secret that the Trustee has  
20 mentioned that many operators are shutting in wells. We  
21 hope that's not the conclusion.

22           And by the way, Your Honor, I would note we  
23 recognize that even were the Trustee to conclude that wells  
24 need to be shut in, they need to be operated -- or they  
25 need to be monitored. "Operated" is not the right word,

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1 but you can't simply shut these wells in and go home.

2 And so the Trustee and UBS are in discussions to  
3 determine what the way forward is in the interests of all  
4 creditors. And obviously UBS wants what's best for it, but  
5 we recognize that it's not appropriate to have these wells  
6 abandoned. It is best if there's at least the possibility  
7 of creditors receiving something through a Chapter 11 plan  
8 or otherwise.

9 But, Your Honor, we're in a very tough  
10 situation -- everyone. And as the Trustee mentioned, the  
11 pricing for his oil has dropped over 50 percent since the  
12 start of the year. He was just getting back operating from  
13 the OSTR shutdown orders and then with COVID-19 and the oil  
14 crisis he suddenly faces buyers, who as you'll recall he  
15 had a hard time arranging. He suddenly faces spot buyers  
16 saying they don't plan to buy any more oil in the month of  
17 May. It's an extraordinary circumstance and the Trustee  
18 and his professionals/employees are doing the best they  
19 can. And at this point this is what UBS is prepared to do  
20 to support that effort and we're all going to have to  
21 figure out where we go next.

22 THE COURT: Okay. All right. I appreciate that,  
23 Mr. Jones. And I -- you know, I -- nobody should construe  
24 anything I said today as -- you kind of know my views. I  
25 just think if there is a Chapter 11 case, if there is a



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1 budget, a cash collateral and financing budget, I think --  
2 and there are provisions for the estate professional I  
3 think there needs to be some sort of fairness to those.

4 And most the statements I made -- all the  
5 statements I made were when the facts were very different.  
6 I don't think my sense that those things need to be fair  
7 will have changed but, you know, maybe the negotiations  
8 lead to different conclusions about what the lender is  
9 willing to fund and what should be funded if the posture of  
10 the case changes. I don't want to interfere with that -- I  
11 don't want to interfere with that negotiation and nothing  
12 I've said should be construed that way.

13 I do acknowledge that my views were based on the  
14 facts as I knew them at the time and the facts may have  
15 changed, although certainly my sense of fairness hasn't  
16 changed, but certainly the facts may have or my sense of  
17 what's fair in terms of treating state professionals  
18 fairly. So --

19 MR. JONES: Thank you, Your Honor.

20 THE COURT: Yeah. I guess I --

21 MR. JONES: I'm sorry. I didn't mean to  
22 interrupt.

23 THE COURT: No, no, no. That's okay. That's  
24 okay. I guess I -- I paused. You didn't really interrupt.

25 So anyway, I -- and I appreciate Mr. Litvak

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1 having made the objection and filed the request for hearing  
2 acknowledging that he's since -- he's since gotten  
3 assurances regarding the funds that are -- you know, that I  
4 thought had been committed for March had been set aside and  
5 I accept all of those representations.

6 Kind of working backwards now to what Mr.  
7 Skillman had talked about, which was -- and Mr. Israel in  
8 response to the issue raised by Mr. Beall, there is and  
9 always has been a timing issue. But I'm comfortable based  
10 on Mr. Jones' reiteration of his client's view that they  
11 are not going to try to take money generated from oil and  
12 doesn't belong -- didn't belong -- never belonged to the  
13 debtor and take that money and climate fairs (phonetic).  
14 So -- and I'm going to, you know, hold them to that  
15 concept. I don't think they could have taken a lien and  
16 property that didn't belong to the debtor in the first  
17 place.

18 And, Mr. Beall, as you've argued on multiple  
19 occasions California law recognizes the oil is the -- part  
20 of the oil, some undivided percentage interest has a  
21 property interest and it's my intention to preserve that  
22 recognition. But I'm comfortable that that -- that this  
23 motion that's before me asking to bless the extended budget  
24 does not do harm to that principle. I noted in particular  
25 that it's a cash budget and it doesn't include the last day

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1 of the month. But I'm comfortable with Mr. Jones'  
2 representation.

3 I am a little concerned that Mr. Beall --

4 MR. ISRAEL: Your Honor --

5 THE COURT: Hold on a second. I'll hear from you  
6 in a second. I am concerned that Mr. Beall is asserting  
7 that he's asked for assurances regarding the amounts that  
8 have been escrowed and feels like he hasn't gotten it and I  
9 didn't hear a response to that yet.

10 So I'll start with Mr. Israel. You can pass it  
11 over to Mr. Skillman if you need to, but what's the story  
12 with the clients that Mr. Beall represents and why can't we  
13 get him some assurance that the royalties for his clients  
14 are -- or attributable to his clients' interests aren't  
15 actually being set aside?

16 MR. ISRAEL: Your Honor, this is Eric Israel.  
17 Your Honor, Mr. Beall has asked for many things. I know  
18 that it was confirmed that once he wanted to -- insisted on  
19 seeing the bank statements and the Trustee and his staff  
20 could then stretch then with all the events that have been  
21 occurring on the accounting side especially. And, you  
22 know, we have -- I have tried to respond to him promptly.  
23 I did tell him that the money had been set aside and, you  
24 know, in terms -- he was asking about, you know, periods  
25 that hadn't even passed yet.

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1 But in any event, we're not purposely ignoring  
2 him. I'm trying to respond as I can. There were disputes  
3 about other matters I won't even put on the record now that  
4 was filed that he claimed were erroneously taken and we had  
5 to get to dispute. It's another matter on the docket.

6 In any event, the Trustee is trying to respond  
7 promptly to all inquiries by parties in interest, including  
8 Mr. Beall.

9 THE COURT: Okay. Well, I think it -- you know,  
10 the one thing I observed is that it's not the first time  
11 I've heard this and I -- look, I don't -- I'm not -- I'm  
12 not going to ascribe blame to either side. Think I know  
13 better than to get sucked into that without knowing the  
14 facts of what exactly has been asked and what's been the  
15 response.

16 But I do observe that Mr. Beall could file a Rule  
17 2004 motion which would be granted in due course or if it  
18 related to a contested matter he could propound discovery  
19 to get at that information and that's probably a more  
20 expensive way for everybody to deal with each other.

21 And so, you know, I would maybe re-double your  
22 efforts to try to -- you know, without reason. I'm not --  
23 I try not to pick sides here, but try to move it up on the  
24 burner because I do keep hearing about this. And I think  
25 it's reasonable for his clients to want some sort of

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1 affirmative evidence other than your word. And I don't  
2 question the value of your word, Mr. Israel, but I think  
3 it's a reasonable request by Mr. Beall to get some kind of  
4 evidence that the money is actually there and been set  
5 aside for his clients.

6 MR. BEALL: Your Honor, may I be heard briefly on  
7 that, Your Honor? William Beall. May I be heard briefly  
8 on that?

9 THE COURT: Yes, of course. Of course.

10 MR. BEALL: Okay.

11 THE COURT: Go ahead.

12 MR. BEALL: Okay. First of all, I did have to do  
13 discovery in the adversary in order to get the documents.  
14 I received information that went through at least February.  
15 It is a continuing demand and I have received no further  
16 information despite the fact that we have discovery demand  
17 because it's a continuing demand.

18 What Mr. Skillman just said, although he tried  
19 not to say it, is that the March 1st payment is then made  
20 sometime soon and the April 1st payment is going to be made  
21 Sunday. Now, the March 1st payment was due 45 days ago to  
22 the escrow account. It has not been made. The April 1st  
23 payment was due 17 days ago to the escrow account. It has  
24 not been made. That is what Mr. Skillman just told you.  
25 The May 1st payment Mr. Skillman's line was "that's at

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1 risk." That means it isn't going to be paid.

2 So what the Trustee has admitted is that the  
3 escrow account is not being funded. If you listen to what  
4 they said today, they tried not to say it, but that's what  
5 they're saying.

6 So, Your Honor, you just can't accept it that  
7 it's being funded when I have demanded, I have requested, I  
8 have formally demanded. I'm not getting any information  
9 because the account is not being funded, not ever timely  
10 and not mostly at all. This is just inappropriate, Your  
11 Honor. Mr. Jones said there's court orders. It has to be  
12 done. There are court orders and it isn't being done.

13 THE COURT: Okay. Mr. Skillman --

14 MR. ISRAEL: Your Honor, this is Eric Israel.

15 THE COURT: All right. Mr. Israel, go ahead.

16 MR. ISRAEL: We dispute that. It is being done.  
17 We are doing it in the best and most timely way we can do  
18 it. In terms of April, the payments -- we will receive on  
19 May 20th the payment for April. And at that point the  
20 money will be set aside and that -- that's what's -- that's  
21 what in general we've been doing. But in terms of --

22 THE COURT: Okay. All right. I'll --

23 MR. ISRAEL: When someone said it was at risk,  
24 it's at risk to the extent that, yes, if we don't get paid  
25 on May 20th for April royalties for April sales, once we

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1 get them, the Trustee has been setting aside 13 percent  
2 and -- but the checks and the accounting don't occur until  
3 later.

4 Mr. Skillman, is that correct?

5 MR. SKILLMAN: Yes. Yes. Your Honor, that's  
6 absolutely right. We are setting this money aside. And  
7 what I was referencing was we don't have -- we don't have  
8 the money for our April sales yet. As you'll recall, we  
9 had sales in November and December that we didn't get paid  
10 for either. So it's still an issue.

11 THE COURT: Right, right.

12 MR. BEALL: There has been no deposits since  
13 February 24th. No deposits. Zero.

14 THE COURT: Okay. Stop. Stop, stop, stop.  
15 First of all, every time you speak you need to state your  
16 name. Okay. And I have recognized Mr. Skillman. I had  
17 not recognized anyone else. So, Mr. Beall, just hold your  
18 horses. I know you're excited. All right.

19 Mr. Skillman, did you not say that the March oil  
20 sales -- you said something about April 20th. Is that when  
21 you're paid or is that when you plan to distribute to  
22 royalty holders and to the escrow account on March sales?

23 MR. SKILLMAN: Crude that is delivered in the  
24 month of March is paid to HVI Cat Canyon on or around  
25 April 20th. At that time we will reserve the money for 13

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1 percent of the sales, which is approximately equal to the  
2 totaling of royalty requirements for March sales.

3 THE COURT: Right. Today is April 17th. You  
4 don't have that money yet, do you?

5 MR. SKILLMAN: No.

6 THE COURT: Okay.

7 MR. SKILLMAN: No, we don't, Your Honor.

8 THE COURT: For February sales you should have  
9 been paid. Was the February -- in March. Were those funds  
10 received and were they put on deposit?

11 MR. SKILLMAN: They were received and put on  
12 deposit.

13 THE COURT: Okay. And the same thing is true of  
14 January funds?

15 MR. SKILLMAN: January funds were received, put  
16 on deposit, and disbursed pursuant to the court order.

17 THE COURT: Okay. And if I had to put you on the  
18 witness stand, the -- you -- this is what you would testify  
19 to?

20 MR. SKILLMAN: Yes, Your Honor.

21 THE COURT: Okay. Mr. Beall, tell me what about  
22 that is a problem because they're not going to set aside  
23 money for sales they haven't received yet.

24 MR. BEALL: Your Honor, William Beall --

25 THE COURT: And I'm not going to --



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1 MR. BEALL: -- (indiscernible) --

2 THE COURT: And I'm not going to require them to  
3 do that. Go ahead, Mr. Beall.

4 MR. BEALL: There was no deposit made on  
5 March 20th nor has there been one since. That's a problem.

6 THE COURT: Well, there wouldn't have been one --  
7 there wouldn't have been any more since March 20.

8 Mr. Skillman -- well, hold on.

9 Mr. Beall, why do you say that? Do you have  
10 evidence --

11 MR. BEALL: The commission -- yes, okay.

12 THE COURT: No.

13 MR. BEALL: First of all --

14 THE COURT: Evidence. Do you have evidence.

15 MR. BEALL: I have a document demand --

16 THE COURT: I (indiscernible) --

17 MR. BEALL: I have a document demand that  
18 requires the bank statements to be sent to me and I have  
19 not received one. Mr. Skillman just said --

20 THE COURT: Okay. Well, that's different.

21 MR. BEALL: -- there hasn't been a deposit.

22 THE COURT: That's different.

23 MR. BEALL: He just said it.

24 THE COURT: That's different. Just because you  
25 haven't gotten the documents you asked for doesn't mean the

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1 facts don't exist. Okay? Please, please stop with that  
2 kind of argument. I really don't appreciate it. Okay. I  
3 really don't appreciate it. That's a huge logical leap,  
4 you didn't get the documents and therefore the money hasn't  
5 been deposited. Okay. And none of it has anything to do  
6 with the motion that's in front of me today which motion is  
7 hereby granted. I've heard enough from all of it and I'm  
8 sick of this issue. And Mr. Beall, I'm getting sick of  
9 your arguments.

10           You have a -- if you have a problem with  
11 compliance with an order bring an appropriate motion. Back  
12 it up with evidence. We'll have a hearing on it. This  
13 motion is granted. We're moving on.

14           MR. BEALL: Your Honor, may I --

15           MR. ISRAEL: Thank you, Your Honor.

16           MR. BEALL: -- have one moment?

17           MR. ISRAEL: Thank you, Your Honor.

18           MR. BEALL: May I be heard once with regard to  
19 the Court's last comments?

20           THE COURT: Yes.

21           MR. BEALL: I did make a motion. It has not been  
22 set for a hearing. It's backed up by --

23           THE COURT: What's your motion?

24           MR. BEALL: The motion to reconsider the denial  
25 of motion for relief from stay; it has not been set for

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1 hearing.

2 THE COURT: That has nothing to do with --

3 MR. BEALL: It's docket (indiscernible) --

4 THE COURT: -- post -- that has nothing to do  
5 with post-petition financing. If you have a problem with  
6 compliance with my financing orders, then you bring a  
7 motion. A motion to reconsider a motion regarding relief  
8 from stay is not a motion for relief from a court's  
9 financing order or for sanctions or for corrective action.

10 THE COURT: And by the way, just, you know, so  
11 you don't get your hopes up, I don't expect that motion for  
12 reconsideration to be granted but I need to study it more  
13 carefully. But I've got to tell you, I didn't see  
14 anything -- any new evidence in there, any new law that you  
15 didn't argue previously. It's still based on this kooky  
16 premise that you should be able to interfere with the  
17 Trustee's exercising his duties to sell property of the  
18 estate which may be commingled with royalty oil that you  
19 couldn't show was segregated or segregable in any way. But  
20 I'm not having a hearing on it now. And I am not required  
21 to set a hearing on a motion for reconsideration and I'll  
22 deal with it in due course. Now we're moving on.

23 MR. ISRAEL: Your Honor --

24 THE COURT: Let's talk about --

25 MR. ISRAEL: This is Eric Israel. Could we get a

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1 final hearing on this motion because this is an interim  
2 hearing.

3 THE COURT: Yeah, when do you propose?

4 MR. ISRAEL: (No response.)

5 THE COURT: When do you propose to have that  
6 hearing?

7 MR. ISRAEL: Yeah, I think we have to give 15  
8 days' notice so -- or it'd have to be a minimum of 15 days.  
9 So from yesterday. Anytime after May (indiscernible), I  
10 think. Let me pull up my calendar.

11 MR. JONES: Your Honor, Evan Jones. If I might  
12 suggest, the final hearing to the extent it's required and  
13 it's never been clear to me an amendment requires the two-  
14 stage hearing, but it will occur after the funds are  
15 advanced, so I'd like to suggest we set it for the next  
16 omnibus hearing to avoid burden on the Court's calendar.

17 THE COURT: That -- that's fine. I mean, I don't  
18 know.

19 MR. ISRAEL: Yes, that's --

20 THE COURT: That's fine with me. Any objection  
21 to that? When's our next omnibus hearing?

22 MR. JONES: It would be May 19th at 10:30.

23 THE COURT: Okay. Fine.

24 MR. ISRAEL: Thank you, Your Honor.

25 THE COURT: Go ahead and no -- go ahead and

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1 notice it.

2 All right. Now let's get back to -- and by the  
3 way, I -- because we're conducting these hearings even if  
4 there's -- even if there's an order lodged now I don't know  
5 how I can review it and keep these hearings going. So if  
6 it had been lodged earlier I would have looked at it before  
7 the hearing. Is that going to be a problem or do I need to  
8 stop the hearing and review the order?

9 MR. ISRAEL: Your Honor, with the revised --

10 THE COURT: Ms. Israel?

11 MR. ISRAEL: Yes, this is Eric Israel. I'm  
12 sorry. With the revised sixth amendment we should be okay.  
13 Actually, the order is -- I think it's attached to the  
14 motion as Exhibit 3.

15 MR. JONES: Your Honor, this is Evan Jones --

16 THE COURT: (Indiscernible) --

17 MR. JONES: I don't believe that the Court need  
18 interrupt the hearing. My clients are on the phone.  
19 Whether they can make the lawyer (phonetic) deadline today,  
20 I don't know, but I believe your court -- Your Honor's  
21 statement will be sufficient to try.

22 THE COURT: Okay. Thanks.

23 MR. JONES: Thank you, Your Honor.

24 THE COURT: Okay. Let me just ask you,  
25 Mr. Israel, are there going to be changes from what was

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1 attached to the motion?

2 MR. ISRAEL: I think it's filling in the blank  
3 for the final hearing date and --

4 THE COURT: Okay.

5 MR. ISRAEL: -- noting the fact that there was an  
6 amendment -- a minor amendment that I explained earlier  
7 that in the sixth amendment we would just refer to that  
8 with the docket number.

9 THE COURT: Okay. Does any --

10 MR. ISRAEL: And also -- and also -- and also --

11 THE COURT: Does any -- go ahead.

12 MR. ISRAEL: -- on that -- I'm sorry. And also  
13 the Committee -- the resolution of the Committee objection.

14 THE COURT: Just acknowledging. Okay. All  
15 right. Does anyone have -- does anyone object to my  
16 signing the order as soon as I get it given those  
17 representations? Okay, then. All right. We'll go ahead  
18 and lodge the order when you can and we'll still do  
19 everything we can to sign it quickly, but there's only one  
20 of me so I'm going to keep on doing this. All right.

21 Okay. Let's talk about #1.00. I'm going to work  
22 backwards. You try to do three things in the motion.  
23 There's procedures for assuming oil and gas leases  
24 authorizing assumption of the surface leases and  
25 authorizing rejection of the Lakeview office and warehouse

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1 lease. I kind of want to deal with these in reverse order.  
2 So I want to first talk about the rejection of the Lakeview  
3 office and warehouse lease.

4 Mr. Israel, with respect to rejection of those  
5 two leases did you get any -- did you receive any  
6 opposition at all? The (indiscernible) --

7 MR. ISRAEL: No, no, I --

8 THE COURT: -- doesn't reflect that we got any.

9 MR. ISRAEL: No, Your Honor. There was no -- I  
10 received no responses or oppositions to the rejection of  
11 (indiscernible).

12 THE COURT: Okay. All right. I'm going to go  
13 ahead and grant that part of the motion and the -- I'm  
14 going to ask you to serve a notice of -- maybe you could  
15 just build it into the order. If you could do a separate  
16 order but -- on the motion, but if it's -- if there's one  
17 order on the motion, maybe a separate notice to the  
18 counter-party to those leases, I'm going to establish June  
19 12, 2020 as the bar date for any rejection claims arising  
20 from this rejection.

21 MR. ISRAEL: Okay. We'll include that in the  
22 order.

23 THE COURT: Okay. All right. And then I just --  
24 I want you to give them notice of the dea -- the order  
25 should say you'll give them notice of the deadline. Maybe

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1 that's --

2 MR. BEALL: Your Honor, William Beall. We're the  
3 other party. Your Honor, I'm on the call. It's -- GLR is  
4 the lessor. It's actually a month-to-month lease. There  
5 won't be any rejection damage, per se.

6 THE COURT: Okay.

7 MR. BEALL: Whatever the Court rules is fine. We  
8 do not oppose the motion. It's not writ -- it says lease,  
9 but it's really a month-to-month (indiscernible), okay.

10 THE COURT: I see. And is GLR the landlord on  
11 both of them?

12 MR. BEALL: Yes.

13 THE COURT: Oh, okay. Well --

14 MR. BEALL: But there's no fault involved.

15 THE COURT: Yeah. So Mr. Israel, I'd still like  
16 you to just go through the motions and create a bar date  
17 just so we have finality on that issue, just in case  
18 somebody's got some theory. But -- then they think it'd be  
19 between now and the bar date. But I appreciate, Mr. Beall,  
20 you stepping up to tell us that there probably won't be any  
21 claim there, so thank you.

22 Okay. In general, Mr. Israel, can you confirm  
23 other than -- other than the agreements with Bradley Land  
24 and Morganti Ranch -- or Morganti Ranch, which in your  
25 supplement are described as both oil and gas and surface



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1 leases, can you confirm for me that the oil and gas leases  
2 are separate written agreements from the surface leases  
3 because here's -- here's my concern. Even if they're --  
4 even if there is no objection or an objection that we could  
5 resolve today or resolve -- you know, let's just say it  
6 looks good and the Trustee can confirm or should be able to  
7 confirm surface leases, if it's part of a document that is  
8 also an oil and gas lease, then there's this sort of issue  
9 about whether the same instrument can be deemed two  
10 different executory contracts where you might be, you know,  
11 treating one part of it differently than the other part of  
12 it, what can you tell me about the -- the oil and gas and  
13 surface leases other than -- again, Bradley Oil and  
14 Morganti Ranch, are they separate?

15 MR. ISRAEL: Your Honor, those are the -- some of  
16 the Bradley documents and the Morganti were -- they're not  
17 all Bradley -- were in the same oil and gas lease. And we  
18 did consult with our oil and gas counsel and that's why we  
19 moved in the supplement -- I believe it was by five Bradley  
20 leases -- from the surface lease category of this motion to  
21 the mineral -- the oil and mineral lease section of the  
22 motion. And they -- their advice to us was that this --  
23 those were the ancillary rights relating to the oil and gas  
24 leases.

25 And as our 365 adversary proceeding alleges, and

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1 they're seeking a declaratory judgment there, those are not  
2 true lease. Those are properly interests and not -- should  
3 not be subject to 365.

4 THE COURT: I know that. Okay. I get that. But  
5 other than the Bradley Land and the Morganti leases, that's  
6 just a few of them, right?

7 MR. ISRAEL: Right. And the rest --

8 THE COURT: Everything -- everything else --  
9 everything else that you're asking the Court to assume as a  
10 surface lease, is it in the same document as an oil and gas  
11 lease or were they all separate documents?

12 MR. ISRAEL: The others are separate documents,  
13 Your Honor.

14 THE COURT: Okay. That's what I'm getting at.  
15 Yeah. All right. I mean, it's kind of hard to tell  
16 looking at exhibits -- you know, at the exhibits the way  
17 they were structured whether -- whether that was true.  
18 Okay. I'm going to keep going based on that  
19 representation.

20 Secondly --

21 MR. MARTINEZ: Well, Your Honor, I -- Vincent  
22 Martinez of Twitchell and Rice. I represent Morganti.

23 THE COURT: Yeah. We'll get to you.

24 MR. MARTINEZ: I don't know if I can -- oh, I  
25 didn't know if -- since you were on the issue of Morganti

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1 and you're trying to understand that issue.

2 THE COURT: No, I'm not. I'm not. That's the  
3 frustration I'm having.

4 MR. MARTINEZ: Okay.

5 THE COURT: I'm trying to say --

6 MR. MARTINEZ: Okay.

7 THE COURT: -- except for Morganti and we're  
8 not -- that's what I'm trying to --

9 MR. MARTINEZ: I'll (indiscernible). Sorry about  
10 that.

11 THE COURT: I'm going to go through -- I'm going  
12 to go through all of the parties that filed an objection  
13 and I'll even give an opportunity for other people to  
14 speak. I will. I promise. I just -- I just wanted to  
15 make sure that with respect to these other documents they  
16 really were separate. Okay. And I will -- Mr. Martinez, I  
17 will get back to you. I'm not -- don't take it personally.  
18 I'm just trying to maintain order.

19 Okay. I want to ask the Trustee one other  
20 general question. So you're asking that as to oil and gas  
21 leases that the Court continue the hearing and see what  
22 happens in the adversary. I get that. That sort of makes  
23 sense what you're asking for.

24 Based on some of the -- one or more of the  
25 objections expressed concern that you were trying to -- the

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1 Trustee was trying to preclude any lessor from filing an  
2 administrative priority expense for post-petition royalties  
3 in the event the Trustee ultimately decides to reject an  
4 oil and gas lease during this interest and -- between now  
5 and when you're asking me to continue the motion as to the  
6 oil and gas leases. Is it the Trustee's intention that a  
7 lessor not be able to file an administrative expense for  
8 post-petition, you know, royalties generated from post-  
9 petition oil fields?

10 MR. ISRAEL: No, Your Honor. That was not our  
11 intent and the post-petition period they -- they should  
12 file to the extent that surface lease payments haven't been  
13 made, I believe the Trustee should be current. But from  
14 the DIP period, I'm not sure that they were all paid.

15 But from the Trustee period, I believe they are.  
16 But if there are post-petition periods that were unpaid  
17 they should file a request for administrative hearing --  
18 payment.

19 THE COURT: Okay. Okay. All right. I  
20 appreciate your clarifying your position. We'll hear some  
21 folks as we go through these.

22 Now I'm going to go through the various folks  
23 that filed an opposition and I apologize because my minutes  
24 are organized by -- are more or less alphabetical as  
25 opposed to by attorney. So I may be calling upon you more

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1 than once, but I'd like to try to just kind of go through  
2 the way my notes are. That is the best -- that will  
3 increase the chances that the judge will keep decent notes  
4 and do the right thing with respect to the right people.

5 Adam Family Trust asks the Court to deny the  
6 motion as to the request to assume the Adam Family Trust  
7 pipeline lease. Is there someone representing Adam  
8 Trust -- Adam Family Trust?

9 MR. MARTINEZ: This is Vincent Martinez with  
10 Twitchell & Rice.

11 THE COURT: Okay. Is that your position? Do you  
12 want me to deny the motion?

13 MR. MARTINEZ: Yes. Yes, but with the caveat  
14 that this is an expired lease by its own terms and --

15 THE COURT: Oh, yeah.

16 MR. MARTINEZ: -- they've been indicated with  
17 exhibit to the motion. And I understand from the footnote  
18 included within the original motion, which is at page 6,  
19 that I just wanted to make sure that this item, which is  
20 before the Court, is just for informational purposes only  
21 as they indicate because --

22 THE COURT: All right. And I'm only talking  
23 about the pipeline lease right now.

24 MR. MARTINEZ: Correct.

25 THE COURT: Okay. I'm trying to deal with the

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1 surface leases.

2 So let me ask, Mr. Israel, is the Trustee trying  
3 to assume a pipeline lease that expired by its terms on  
4 July 1, 2019?

5 MR. ISRAEL: (No response.)

6 THE COURT: If you're speaking, I can't hear you.  
7 I don't know if you've muted your phone, Mr. Israel.

8 MR. ISRAEL: Oh, I'm sorry. I did mute my phone.

9 THE COURT: Okay. It's okay if you --

10 MR. ISRAEL: My --

11 THE COURT: -- need time to think about it, too.

12 MR. ISRAEL: Yeah.

13 THE COURT: Just tell me. But I -- there was a  
14 long silence.

15 MR. ISRAEL: No, I -- I had muted my phone.

16 THE COURT: There's a --

17 MR. ISRAEL: I apologize. Your Honor --

18 THE COURT: No problem.

19 MR. ISRAEL: If I could, I just got a text from  
20 Aaron de Leest who's on the call. I believe he knows the  
21 answer on that one, specifically on this lease, which I  
22 could ask him to --

23 THE COURT: All right.

24 MR. ISRAEL: -- to speak particularly on that.

25 THE COURT: All right. Mr. de Leest.

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1 MR. de LEEST: Yes, Your Honor. It's not the  
2 Trustee's intention to assume an expired lease. I don't  
3 believe we're asked to do that and we've prepared this  
4 chart and I thought I was explicit when I did it.  
5 Sometimes things don't always look the way that they do in  
6 your mind to the Court or other parties. But it looked, as  
7 Mr. Martinez has said, for informational purposes just to  
8 have all the surface leases in one place.

9 THE COURT: Okay. So let me just say I expect  
10 any order on this motion to include a provision. What  
11 you're saying is that's something you never asked for. I'm  
12 not exactly going to say I'm denying your request. I'd  
13 like the order to clarify that notwithstanding anything in  
14 the motion that the Trustee wasn't seeking and the  
15 assumption and the Court is not approving assumption of the  
16 Adam Family Trust pipeline lease. Okay.

17 MR. MARTINEZ: Yes, Your Honor. I think we would  
18 say we're not assuming an expired lease, yes.

19 THE COURT: Okay. All right. I have another  
20 question for the Trustee. This relates to the Bognuda  
21 Trust. Apologies if I'm mispronouncing Bognuda. I'd like  
22 to ask the Trustee if there's -- I have some confusion over  
23 what your -- again, whether this is like a perforation  
24 (phonetic) purposes only or not. There is an easement  
25 agreement attached to proof of claim #161. It's not

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1 mentioned in the motion. It's not mentioned in Exhibits 2  
2 and 3 that there is a surface lease in the form of -- well,  
3 it's an easement agreement. Okay. I don't know if you  
4 consider that a surface lease or not. Certainly not an oil  
5 and gas leak.

6 What, if anything, was the Trustee's intention  
7 with respect to the easement agreement that's attached to  
8 proof of claim #161 and are there any other surface leases  
9 that you're --

10 MR. de LEEST: Your Honor, Aaron de Leest --

11 THE COURT: -- (indiscernible).

12 MR. de LEEST: Oh, I'm sorry, Your Honor.

13 THE COURT: Yeah. No, go ahead.

14 MR. de LEEST: No, it's not on our list. It was  
15 our intention that that particular easement -- and I don't  
16 have the proof of claim in front of me -- wasn't something  
17 we considered a surface lease to be assumed.

18 THE COURT: Okay. All right.

19 MR. de LEEST: But I don't have it particularly  
20 in mind.

21 THE COURT: Yeah, that's fine. And who knows?  
22 You know, an easement agreement cannot be an unexpired  
23 lease or an executory contract in any event. It may create  
24 something that runs with the land. Who knows? All right.  
25 Just have a very diligent staff and they noticed proof of



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1 claim #161 had an easement agreement.

2 Who is on the phone representing the Bognuda  
3 Trust?

4 MR. MARTINEZ: Vincent Martinez with Twitchell &  
5 Rice, Your Honor.

6 THE COURT: Okay. Mr. Martinez, are you  
7 comfortable with the Trustee's representation that there's  
8 no surface lease with Bognuda Trust that's subject to this  
9 motion and there's no release that they're seeking with  
10 respect to the easement agreements?

11 MR. MARTINEZ: Yes, I'm comfortable with that,  
12 Your Honor.

13 THE COURT: Okay. All right. I'm not sure that  
14 you need to put anything in the order on this specifically  
15 because, honestly, that's not something that was mentioned  
16 in Exhibit 2 and 3, but I'll leave that up to you. I'm not  
17 going to require that. All right.

18 Bradley Land Company, it appears that the  
19 Trustee's supplement withdraws all the release requested in  
20 the motion as to the Bradley surface leases and states that  
21 the Trustee will treat all agreements with Bradley as oil  
22 and gas leases. It doesn't appear that there's any relief  
23 requested today with respect to immediate assumption of  
24 anything with -- of a surface lease with Bradley Land. Is  
25 that right, Mr. de Leest?

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1 MR. de LEEST: Your Honor, it's a little finer  
2 than that and thank you for pointing that out. Bradley has  
3 a lot of agreements and to clarify that I can go through  
4 them. And attached to our supplement -- actually, it's  
5 attached to our reply. Excuse me. We submitted another  
6 version of -- version of Exhibit 2 to sort of help the  
7 Court see this by number. We actually numbered the  
8 agreements so that there wasn't any confusion.

9 THE COURT: Yes.

10 MR. de LEEST: Again, sometimes when I prepare  
11 these things it's a reflection that you see that maybe it's  
12 not as clear as it should be. But however -- but Bradley  
13 may have -- it's essentially, let's call it, 15 agreements  
14 that are on the Exhibit 2 which basically numbers 2 through  
15 22. Five of those agreements, which I've numbered in sort  
16 of the supplemented exhibits to, Number 6, 9, 11, 12 and 13  
17 are the ones mentioned in our supplement that are being  
18 moved essentially from the surface lease category to the  
19 mineral lease category. And those are the subject of the  
20 supplemented. So there are other agreements specifically  
21 that are considered surface agreements or surface leases  
22 that we are trying to assume.

23 THE COURT: Ah, okay. All right. Hold on. 6,  
24 9, 11, 17.

25 MR. MARTINEZ: 6, 9, 11, 12 and 13.

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1 THE COURT: 6, 9, 11, 12 and 13. Okay. All  
2 right.

3 Who is on representing Bradley Land Company?

4 MR. HOLMAN: Brian Holman of Musick Peeler &  
5 Garrett.

6 THE COURT: Ah, Mr. Holman. Okay. Mr. Holman,  
7 are you clear on what is and isn't being treated under the  
8 motion and to the extent it's not one of these items that's  
9 being moved to the oil and gas category is there any  
10 objection to assumption of the -- what I assume are purely  
11 surface leases?

12 MR. HOLMAN: Yes, Your Honor. As set forth in  
13 our opposition, we object on the grounds that the Trustee  
14 is not proposing to make immediate payments of the past-due  
15 amounts and we believe particularly in light of the  
16 discussion we had earlier today on the financing that the  
17 Trustee can't provide reasonable assurance that there will  
18 be cash to pay amounts owing on a going-forward basis.

19 THE COURT: Okay. All right. What's the  
20 Trustee's -- what's the Trustee's response? Mr. Israel or  
21 Mr. de Leest?

22 MR. de LEEST: Your Honor -- oh, sorry, Your  
23 Honor. I was speaking through (indiscernible) -- answer.  
24 Mr. de Leest here. You know, the Trustee's perspective is  
25 laid out in our reply where we think we've met our burden,

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1 that we have met all of the elements to assume them.

2 THE COURT: Well, show me. What's your response?  
3 I've got a lot of paper.

4 MR. de LEEST: Sure enough.

5 THE COURT: Have a lot of things --

6 MR. de LEEST: Give me a moment here.

7 THE COURT: Yeah. Okay. While you're looking --  
8 while you look for the paper, Mr. Holman, can you remind  
9 the Court what arrearages you assert and please distinguish  
10 between prepetition arrearage and post-petition arrearage.

11 MR. HOLMAN: Your Honor, I believe at this point  
12 there's only prepetition arrears and it's about \$15,000.

13 THE COURT: Oh, okay. Well, that makes it a  
14 little easier. A little easier, but we're talking about  
15 assumption.

16 So then I guess the question, Mr. de Leest, is  
17 the -- let me pull out the Code here. The Code talks  
18 about -- oh, I want to get it right. 365(b)(1)(A), one of  
19 the elements is "cures or provides adequate assurance that  
20 the trustee will promptly cure such defaults" other than  
21 default, you know, relating to account (phonetic)  
22 provisions, et cetera.

23 So explain to me what the cure or adequate  
24 assurance of prompt cure is separate and apart from  
25 adequate assurance of future performance, although they're

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1 not unrelated.

2 MR. de LEEST: Your Honor, the Trustee's  
3 perspective is that we have sufficient funds, particularly  
4 here with Bradley where the amount of the issue between  
5 Bradley and the Trustee is not in dispute. It's very  
6 minimal. I think we said that it was about \$14,891.  
7 Bradley's number was in the 15,000 range, about \$200 apart.  
8 And given that number, the Trustee has the ability to cure  
9 that.

10 As to future performance, we --

11 THE COURT: Okay. Well, stop -- stop right  
12 there. So when -- you have the ability. Do you intend to  
13 write them a check once that discrepancy is resolved --

14 MR. de LEEST: Your Honor, we hope that --

15 THE COURT: -- if I grant the order?

16 MR. de LEEST: It was hopeful and as set forth in  
17 our papers that it would be cured when those leases are  
18 sold as part of a sale because of the cash situation that  
19 the Trustee is in --

20 THE COURT: (Indiscernible) --

21 MR. de LEEST: -- the total amount that's been --  
22 the total amount of the assumed leases is -- it's a bit  
23 more. It's in the \$300,000 range and cash is tight, as we  
24 said. But as to Bradley it's only about \$15,000 or -- it's  
25 actually less if we move those -- some leases into the 365

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1 mineral lease category, but total is quite minimal.

2 THE COURT: So with respect to Bradley -- with  
3 respect to Bradley how could -- how could I grant your  
4 motion to assume today? I mean, maybe I could continue it.  
5 But you're basically saying to Bradley who's objecting --  
6 okay. The parties that didn't object, that's a different  
7 story. But Bradley objected and they're saying -- and  
8 Bradley is saying, you want it ordered now assuming the  
9 lease but I'm not getting an immediate cure or adequate  
10 assurance of a prompt cure because the cure depends on the  
11 Trustee being able to sell these assets. A sale which I  
12 don't think there's any evidence in the record is likely --  
13 I mean, we all hope it'll happen but we don't know if a  
14 sale is possible, you know, or feasible.

15 So how could I possibly allow you to assume  
16 today?

17 MR. de LEESE: Your Honor, I can address that in  
18 two respects. First, with respect to prompt cure that the  
19 authority we provided gives that in the discretion of the  
20 Court and the Trustee is requesting that the prompt be sort  
21 of an extent -- not extended in the sense of long, but that  
22 we be given time up to a sale to provide that you're in  
23 that fashion.

24 If the Court thinks that's unreasonable we'll  
25 leave it with the Court. We would then request that you

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1 continue it so that we can discuss with the Trustee and  
2 Mr. Skillman, you know, and the bank, for that matter, how  
3 we can provide a cure that the Trustee -- or that Bradley  
4 and the Court is requiring.

5 THE COURT: Yeah, I don't know how I feel. I'm  
6 testing -- I'm posing questions to you. I don't know what  
7 I'm going to do, but it seems to me that it's a -- it's  
8 arguably a stretch. I mean, it's one thing to say prompt  
9 cure when you're able to put some time frame around it,  
10 right. It's two months or three months or six months and  
11 you say, Judge, you know, come on. This is prompt because  
12 we know -- or it's likely that this will happen -- adequate  
13 assurance that it will happen in a prompt period.

14 Here it's a little different than that because  
15 I'm being asked to, again, assume it today based on the  
16 possibility not even -- I don't think I have enough  
17 evidence to judge it a probability but a possibility that  
18 there's a sale and so I don't know. I don't know. And the  
19 assumption is the Trustee, you know, assuming all of those  
20 obligations and maintaining a sort of contractual right to,  
21 you know, enforce that agreement.

22 Of course, on the other hand, since I think it  
23 was BAPCPA, suggesting to be the inference in the Code that  
24 one can assume a contract and then still reject it after  
25 assuming it and -- I don't know what to make of that. I

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1 just -- I'm not saying necessarily that anybody has to  
2 write the counter-party objecting today, but I'm not sure  
3 that I can grant the motion today without knowing, you  
4 know, if and, you know, when and if it's going to be cured.

5 I mean, the section that they talk about if talks  
6 about, you know, adequate assurance of prompt care, this  
7 doesn't -- it assumes that it will be cured and  
8 handicapped. How likely the debtor will be able -- if the  
9 estate will be able to do it, I guess you could collapse  
10 the probability of a sale somehow into that, but I'm -- but  
11 do I have evidence on the probability of a sale or the  
12 likelihood that a buyer would want to pay for the  
13 assumption of these things?

14 MR. de LEESE: Yes, Your Honor. We -- and the  
15 Trustee is on the line and Mr. Skillman is also on the  
16 line. They can speak to the probability of a sale at this  
17 point given the financial extent (phonetic) of the world  
18 per issue with respect to oil that may be -- been asked and  
19 brought from that as well.

20 But it -- in the motion I believe we did say that  
21 it was -- the Trustee was hopeful that the sale would take  
22 place towards the end of the summer. Now, that was maybe  
23 contemplated when the world was a little bit different and,  
24 again, the Trustee could speak to that, potentially could  
25 allow.



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1 THE COURT: Yeah.

2 MR. MCCONNELL: Your Honor, this is Mike  
3 McConnell, the Trustee. There is no sale with -- currently  
4 in process. I can't give the Court a timeline when a sale  
5 might take place.

6 THE COURT: Okay. That's what I figured. I  
7 appreciate your candor. All right.

8 Let me -- before I move on to the other parties,  
9 let me just ask Mr. Holman, was there anything else you  
10 wanted to say at this point?

11 MR. HOLMAN: Your Honor, my client told me there  
12 might be a \$300 post-petition penalty due.

13 THE COURT: Okay. Fair enough. Let me ask  
14 you -- let me ask you this, Mr. Holman. If the Court were  
15 to continue its hearing on the motion, it doesn't really  
16 affect the ability of your client -- or rather it doesn't  
17 affect the entitlement of your client to post-petition  
18 performance, but it would sort of put on hold the question  
19 of whether and when the Trustee might need to cure the  
20 prepetition amount. Do you have any problem with a  
21 continuance?

22 MR. HOLMAN: Yes, Your Honor. The Bankruptcy  
23 Code provides limitation on a date by which the Trustee  
24 must assume or reject. You know, in the Ninth Circuit the  
25 courts have held that a deadline can be extended as the

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1 Trustee makes a motion to assume, but I don't think the  
2 intent is that the mere filing of the motion to assume has  
3 affected it be continued, you know, on and on and on.  
4 We're entitled to a prompt decision to assume or reject.  
5 If the Trustee elected to assume he's required to make the  
6 cure, provide prompt assurance of cure, and not to extend  
7 the time to assume or reject indefinitely by continuing  
8 to --

9 THE COURT: Well, he's -- the Trustee is not  
10 asking me --

11 MR. HOLMAN: -- (indiscernible) --

12 THE COURT: The Trustee is not asking me to  
13 continue this, is he?

14 MR. HOLMAN: I think he was proposing that it  
15 would be continued.

16 THE COURT: No, I -- I'm just talking about the  
17 surface leases, not the oil and gas lease.

18 MR. HOLMAN: Right.

19 THE COURT: Okay. All right. Let me go through  
20 the others. BUGANKO, LLC.

21 MS. GRANT: Karen Grant.

22 THE COURT: Hello.

23 MS. GRANT: Yes, Your Honor. We filed a -- we  
24 filed it as a joinder, but we also made similar objections  
25 that have been raised already by prior counsel, which is

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1 that there -- this assumption feels like it's a tentative  
2 assumption. The --

3 THE COURT: Okay. I just want to focus on the --

4 MS. GRANT: -- (indiscernible) --

5 THE COURT: -- narrative. Can you focus on the  
6 surface lease? We'll talk about the oil and gas lease  
7 separately.

8 MS. GRANT: Well, I -- it relates to both of  
9 those because --

10 THE COURT: Okay. All right. That's fine.

11 MS. GRANT: -- so with regard to the surface  
12 lease there is a provision in their motion that says, you  
13 know, if we -- we retain the right to reject it if the  
14 buyer doesn't want it. So they're not really proposing to  
15 assume.

16 THE COURT: Right.

17 MS. GRANT: In concrete terms. They're making it  
18 somewhat tentative and I don't think that that 365 provides  
19 for that.

20 Now, the other part is to cure and they're not  
21 providing for that either at this point as the Trustee's  
22 counsel indicated. They're hoping that they have a buyer  
23 someday that will come up with that money, but that's not  
24 what 365 provides for.

25 My client is -- BUGANKO is -- the cure amount in

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1 their motion is 91,000. It's one of the largest ones  
2 listed. And there actually are -- proof of claim is a  
3 little higher. It had some post-petition. I think that  
4 those have been paid, so the -- even --

5 THE COURT: Is the 91,000 on -- is the 91,000 on  
6 surface leases or oil and gas?

7 MS. GRANT: That's on the surface lease. The  
8 surface -- a rental agreement. We have two different --  
9 BUGANKO has the surface rental agreement and then Janet  
10 Ganong has the oil and gas lease, so they're two  
11 separate --

12 THE COURT: Okay.

13 MS. GRANT: -- obligations and leases. And with  
14 regards to the BUGANKO and its surface lease, that's 91,000  
15 that they're asking to, yes, we will assume but -- but  
16 maybe we'll assume or maybe we won't assume and we might  
17 see the money and we might not.

18 And given the state of this case, you know, it's  
19 kind of -- we don't have a buyer now, so they can't come  
20 and assure this court that there would be even a prompt  
21 payment or provide adequate assurance that that won't  
22 happen.

23 THE COURT: Okay. Maybe it is more efficient  
24 while we're -- while I'm going through these just to ask if  
25 there is anything else you want to say about the oil and

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1 gas leases. I mean, the oil and gas leases are in a  
2 different -- in a different posture because they are the  
3 subject of an adversary proceeding and they -- they may  
4 turn out that they may or may not be subject to Section  
5 365. Doesn't that kind of put them in a different posture?

6 MS. GRANT: Certainly the Trustee's adversary --  
7 Karen Grant. Certainly the Trustee's adversary actions has  
8 made an issue as to whether 365 applies and if it doesn't  
9 apply, you know, we're not talking about this anymore. But  
10 if it does, I think they still have to meet the  
11 requirements under 365. And, you know, I understand the  
12 Court is more in doubt with possibility of continuing to  
13 let that -- continuing that portion of the motion to let  
14 that happen. But that -- with regards to the surface  
15 settle (phonetic) agreements, you know, that's not even  
16 part of the issue here, that it clearly is an executory  
17 contract.

18 THE COURT: Okay. All right. I appreciate that.

19 MR. HOLMAN: Your Honor --

20 THE COURT: Thank you. Yes.

21 MR. HOLMAN: This is Brian Holman. We also made  
22 that same argument.

23 THE COURT: On the -- oh, with respect to oil and  
24 gas?

25 MR. HOLMAN: No, with respect to the surface

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1 leases.

2 THE COURT: Tell me which argument it is that you  
3 made that's different than what you said before.

4 MR. HOLMAN: No, it's not different. I'm saying  
5 we're also asserting that assumption or rejection should be  
6 present and not preferred until there's some sale.

7 THE COURT: Okay. All right. Very good. I  
8 understood that, but thank you for clarifying before moving  
9 on.

10 All right. Let's -- let me move on to the  
11 Escolle Tenants In Common. And who is representing those  
12 parties?

13 MR. MARTINEZ: Vincent Martinez of Twitchell &  
14 Rice appearing on behalf of Escolle Tenants In Common.

15 THE COURT: Very good. All right. So there  
16 seems to be -- the main issue here, if I understand it, is  
17 a discrepancy between the cure amounts. There -- you filed  
18 a proof of claim at claim #115 asserting the \$13,500. Is  
19 that right? But you seemed to be okay with --

20 MR. MARTINEZ: That's --

21 THE COURT: -- with the Trustee's number of  
22 \$9,000.

23 MR. MARTINEZ: Vince Martinez speaking. Yes,  
24 Your Honor. I put that in there in the proof of claim, but  
25 to be honest with the Court is we don't have any record of

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1 the surface agreement that was listed within Exhibit 2 of  
2 the motion.

3 THE COURT: Okay.

4 MR. MARTINEZ: So I did it more in the sense  
5 of --

6 THE COURT: You're --

7 MR. MARTINEZ: -- safety in regards to --

8 THE COURT: Okay.

9 MR. MARTINEZ: -- and finding the agreement.  
10 Yes.

11 THE COURT: I understand. Okay. Do you -- at  
12 this point do you oppose -- does Escolle -- do the Escolle  
13 Tenants In Common oppose assumption of Escolle's surface  
14 leases?

15 MR. MARTINEZ: Yes, we would because we -- again,  
16 I'm ignorant of the fact of whether or not it is part of  
17 the -- any of the original oil leases. I just don't know  
18 where this document ties into.

19 THE COURT: Okay. Mr. de Leest, do you have  
20 Escolle's surface leases that you could produce them to  
21 Mr. Martinez?

22 MR. de LEEST: If we're talking about -- Your  
23 Honor, Aaron de Leest here. Thank you again.

24 The one Escolle agreement that I'm aware of is  
25 the -- I don't believe is -- relates to any one of

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1 Mr. Martinez's clients. It's #35 on the list and so I -- I  
2 don't think that there are any surface leases relating to  
3 Mister -- he said -- and I'm looking at our chart, relates  
4 to directing his clients -- think only agreements that he  
5 has are oil and gas leases.

6 THE COURT: Okay. Well, when you say "his  
7 clients," is there an Escolle surface lease or are you  
8 saying you're not aware of any?

9 MR. de LEEST: I'm saying I'm not aware of one.  
10 The one reference on the chart, #35, relates I believe to  
11 the Rogetti (phonetic) family.

12 THE COURT: Okay. So any order on this motion  
13 would make it clear that you're not -- you didn't ask for  
14 any relief and you're not getting any relief with respect  
15 to any surface lease of the Escolle Tenants In Common?

16 MR. de LEEST: Again, to the extent they're not  
17 on the chart. I don't believe that they are, but --

18 THE COURT: Okay.

19 MR. de LEEST: I mean, as far as to act our --  
20 you know, our land lawyer, but I -- I did --

21 THE COURT: Okay.

22 MR. de LEEST: -- (indiscernible) see them and I  
23 wasn't aware of any in their reply -- or opposition either.

24 THE COURT: All right. All right. Hold on a  
25 second.



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1 (Pause)

2 Very tiny print. Switch glasses here.

3 (Pause)

4 All right. On page 79 of your motion in the  
5 middle of -- this is in Exhibit 3, in the middle of the  
6 page that's Bates stamped 79, is a right-of-way agreement  
7 and it says the lease name is Escolle and it has the name  
8 of the parties as the Escolle Tenants In Common.

9 So it looks like Mr. Martinez does have a client  
10 affected by -- you know, that has a surface lease that's  
11 affected by the motion (phonetic).

12 MR. de LEEST: I think -- is that -- that's the  
13 right-of-way agreement dated November 9, 2001.

14 THE COURT: Right.

15 MR. de LEEST: I believe that may be a --  
16 that's -- so I'll have to sort that out, Your Honor. I  
17 believe that might be a typo. I'm actually looking at the  
18 right-of-way agreement that says it's with the rest --  
19 Earnest and Rogetti (phonetic) to -- Ernest Rogetti Trust.  
20 To the extent those are his clients, maybe he could give us  
21 that information.

22 THE COURT: Okay.

23 MR. de LEEST: But I don't believe so. I think  
24 that's the --

25 THE COURT: All right. Well --

1 MR. de LEEST: -- (indiscernible) yeah.

2 THE COURT: So I'll put them in your chart.

3 Mr. Martinez, do you represent the Ragetti  
4 entities?

5 MR. MARTINEZ: I do not.

6 THE COURT: Okay. All right. So we have an open  
7 issue there. All right.

8 And Mr. Martinez, do you want to say anything  
9 about the relief regarding the oil and gas lease?

10 MR. MARTINEZ: I believe that that's just stayed  
11 for the adversary hearing from what I understood from  
12 (indiscernible) and --

13 THE COURT: Well --

14 MR. MARTINEZ: I mean, we do oppose --

15 THE COURT: Okay, then maybe we can simply add --

16 MR. MARTINEZ: We do oppose the assumption, yes.

17 THE COURT: You oppose the assumption, okay.

18 MR. MARTINEZ: Yes.

19 THE COURT: Do you oppose the requested  
20 continuance of that request so that we can deal with the  
21 adversary?

22 MR. MARTINEZ: Correct.

23 THE COURT: I'm sorry. You do or you don't?

24 MR. MARTINEZ: I'm sorry, I'm not understanding  
25 the Court right now.

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1 THE COURT: Okay.

2 MR. MARTINEZ: I'm thinking that when the --

3 THE COURT: Part of the relief that's being  
4 requested in the motion, #1.00 on the calendar today, is  
5 to -- is to sort of recognize that the Trustee is asked to  
6 assume oil and gas leases if it turns out they are subject  
7 to Bankruptcy Code Section 365, which is the essential  
8 question being asked by the adversary.

9 So if they lose the adversary they're trying to  
10 preserve the ability to assume the lease and have asked  
11 with respect to that assumption of any oil and gas leases  
12 if the Court leaves a motion on the books and simply  
13 continue the hearing until later in the year when  
14 presumably the Court would rule on they hope in motions for  
15 summary judgment or cross-motions or whatever. Do you have  
16 a view on their request that the assumption issue be  
17 continued?

18 MR. MARTINEZ: Via the notice of this motion.  
19 Via the motion itself right now before the Court.

20 THE COURT: Yes.

21 MR. MARTINEZ: I have no opposition for them to  
22 be continuing the motion in light of what's going to happen  
23 in the adversarial proceedings. No, Your Honor.

24 THE COURT: Okay. That's what I'm getting at.  
25 Thank you so much.

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1 I think in terms of the -- in terms of the -- of  
2 whether or not there's a surface lease subject to the  
3 motion, that's probably a reason in and of itself to  
4 continue with respect to the Escolle parties. But I  
5 appreciate that. Okay.

6 Let's talk about Candace Lane Evenson. I'm going  
7 to ask Trustee's counsel to confirm for me that Evenson  
8 is -- only has an oil and gas lease.

9 MR. ISRAEL: Yes, Your Honor. Let me --

10 THE COURT: The objection was kind of vague as to  
11 what she thought she had, so can you tell me what you're  
12 asking for?

13 MR. ISRAEL: Let me double-check my chart  
14 (phonetic), Your Honor. One second.

15 THE COURT: Sure.

16 MR. ISRAEL: My records indicate that she only  
17 has oil and gas lease and we were not -- we're requesting  
18 relief relating to a surface lease, Your Honor.

19 THE COURT: Okay. All right. Very good. All  
20 right. Let me turn to the -- oh, I know you mentioned it,  
21 Ms. Rhim, and I've already forgotten how to pronounce Laor  
22 or Laor Liquidating Associates and Guarantee Royalties.

23 MS. RHIM: Yes, Your Honor. It is Laor.

24 THE COURT: Laor. Laor. Okay. All right. With  
25 respect to the surface leases involving your clients,

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1 Ms. Rhim, there didn't seem to be a dispute about cure  
2 amounts.

3 MS. RHIM: Well, Your Honor --

4 THE COURT: Or --

5 MS. RHIM: -- can --

6 THE COURT: Yeah.

7 MS. RHIM: Can I address that? I think our --  
8 our situation is a little bit different. Laor and  
9 Guarantee holds oil and gas leases I guess you -- for lack  
10 of a better way to describe it on adjacent parcels of land.  
11 And these agreements were entered into long ago, since the  
12 '20s and '50s and so forth.

13 More recently there was -- there were disputes  
14 and defaults regarding non-payment of royalties and other  
15 breaches under those leases and, as a result, there was a  
16 state court action filed in 2005. There was a settlement  
17 agreement reached in 2009 and it looks to me that the  
18 Trustee is considering that settlement agreement to be a  
19 surface lease. It's a little bit of a surprise to me that  
20 it was characterized that way. I'm not sure that we really  
21 have surface leases, but that's the agreement they seem to  
22 peg the surface lease to.

23 There are certain ancillary rights that are  
24 afforded under the oil and gas leases to provide access and  
25 such to be able to extract those rights obviously from the

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1 ground, but we don't have a separate surface lease. But  
2 certainly I would be happy if we had clarification in the  
3 order that there's no assumption of any surface lease  
4 that's not really applicable because here I think the  
5 bigger issue is regarding the nature of the oil and gas  
6 lease that's the subject of the adversary proceeding and  
7 also my client's counterclaim or I should say cross-claim.  
8 So I --

9 THE COURT: All right.

10 MS. RHIM: -- that's my take on all of this, that  
11 I don't think --

12 THE COURT: Okay.

13 MS. RHIM: -- I think there was a  
14 mischaracterization. So we would in kind have no relief  
15 granted as against my client as to the surface leases.

16 THE COURT: Okay. All right.

17 Mr. de Leest, do you want to respond to that?

18 MR. de LEESE: Your Honor, I -- you know, counsel  
19 is correct in I think the way she's characterizing the  
20 agreement. It's a 2009 -- March 26, 2009 recorded document  
21 called grant of easement. It's a partial surrender and  
22 quitclaim deed and granted easement of surface use. I  
23 think the Trustee would be fine in treating that along with  
24 a mineral lease and the mineral lease rights with respect  
25 to the adversary proceeding rather than a surface lease.

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1 But we put these things in because they are -- it's --  
2 it's -- there is some surface use rights in this document.

3 THE COURT: Okay. So you're not seeking relief  
4 with respect to any surface agreement?

5 MR. de LEEST: There is no separate surface  
6 lease. It is just -- it's part of --

7 THE COURT: Okay.

8 MR. de LEEST: -- this -- I think the way I  
9 characterized this document, I mean the counsel agrees we  
10 can -- or we would treat it as part of their mineral lease.  
11 That is fine with respect to the Trustee's position.

12 THE COURT: Okay. So let me go back to you,  
13 Ms. Rhim, and ask what is your view of the relief requested  
14 as to the oil and gas leases in this #1.00 which is (a) you  
15 know, we want to assume them if we lose in the adversary  
16 and really just want you to continue the hearing till then.

17 MS. RHIM: Your Honor, I think our first request  
18 would be that the motion be denied as a substantive matter  
19 because we believe our leases have already terminated. But  
20 certainly I understand where things stand and if the Court  
21 is inclined to defer all rulings with respect to the  
22 assumption issue, you know, we're fine with that, too. I  
23 mean, we filed cross-claims and, you know, it sounds like  
24 all of those issues would just be deferred to a later time  
25 and I'm okay with that again with the clarification that

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1 there are no surface leases. All those issues be wrapped  
2 up and considered as part of the oil and gas leases.

3 THE COURT: Okay. All right. I appreciate that.  
4 I think -- you know, in your case there is this -- there is  
5 this sort of issue that has to be resolved pursuant to the  
6 adversary I think and not whether -- whether there's a  
7 lease to -- you know, counter that issue now with  
8 everything else in the adversary whether the lease expired  
9 or not, although presumably it seems like -- well, maybe  
10 it's not. Maybe it's not easy to settle that issue. It  
11 may be very factored (phonetic), but I don't know. So  
12 okay, I appreciate that.

13 I want to ask the Trustee as to Morganti Ranch.  
14 Can you confirm whether the motion is seeking any relief as  
15 to Morganti Ranch as a surface lease or everything is in  
16 the oil and gas category?

17 MR. ISRAEL: There is -- we moved one over to the  
18 oil and gas category, but there is one surface lease listed  
19 as -- one second -- it will be #33, right-of-way agreement  
20 dated August 20, 1943 and there's a back rent due on that  
21 agreement of about \$75.00 and it is a stand-alone  
22 agreement.

23 THE COURT: Okay. Who's on the phone that  
24 represents Morganti?

25 MR. MARTINEZ: Vincent Martinez with Twitchell &



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1 Rice, Your Honor.

2 THE COURT: Okay. Mr. Martinez, what -- all  
3 right, it sounds like there's one surface lease, sort of  
4 a -- putting aside the oil and gas leases that are  
5 conceptually for a second.

6 Do you have any objection to the assumption of  
7 that one surface lease?

8 MR. MARTINEZ: I do have an objection, but it's  
9 more of a clarity, I would say, is that we have no record  
10 of any letter agreement dated August 20th of 1943. The  
11 only right-of-way which correlates with the \$75 is a  
12 document, which is dated the 16th of April 1946.

13 THE COURT: Yes.

14 MR. MARTINEZ: And it's split with the Alfonso  
15 Bell Corporation (phonetic). That's what ties to the \$75.

16 THE COURT: All right. And have you shared that  
17 with Trustee's counsel?

18 MR. MARTINEZ: No, Your Honor. No.

19 THE COURT: Okay. All right. So that -- there's  
20 an outstanding issue there.

21 And what is Morganti Ranch's view on the oil and  
22 gas leases and the requested -- same position? You're sort  
23 of okay that those -- you know, any sort of assumption on  
24 the oil and gas leases be considered after the adversary?

25 MR. MARTINEZ: Yes, Your Honor.

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1 THE COURT: Okay. All right.

2 MR. MARTINEZ: And, Your Honor, I can ship -- I  
3 will email moving party's counsel --

4 THE COURT: Who's speaking?

5 MR. MARTINEZ: I'm sorry. Vincent Martinez, Your  
6 Honor.

7 THE COURT: Okay.

8 MR. MARTINEZ: Yes. Sorry about that. I will  
9 send over the copy of the agreement that I referred to just  
10 before the Court right now to moving party's counsel.

11 THE COURT: Okay.

12 MR. MARTINEZ: Yes.

13 THE COURT: Sounds good. Thank you.

14 All right. Mr. de Leest, Manford Sanders is on  
15 your chart. It's in Exhibit 2 and 3 but it's described as  
16 having expired September 30, 2018, if you look at Bates  
17 stamp page 80.

18 So are you seeking any relief with respect to a  
19 surface lease that expired?

20 MR. de LEEST: We are not, Your Honor.

21 THE COURT: (Indiscernible) chart?

22 MR. de LEEST: No, Your Honor.

23 THE COURT: Okay. Very good.

24 All right.

25 MR. de LEEST: And I -- that would be number 44

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1 on the chart with -- where I added the numbers, which is in  
2 our reply.

3 THE COURT: Okay. All right. State College, is  
4 there anyone representing State College?

5 (No response.)

6 Okay. Here's the issue I have with State  
7 College. I know they didn't -- they didn't object, but  
8 they had filed proofs of claim 33, 34 and 35. And they  
9 were -- they were filed -- hold on a second. They appear  
10 to have been filed prior to the motion, but the motion  
11 doesn't really address those proofs of claim and I really  
12 would -- I'm uncomfortable where that's the fact pattern  
13 necessarily granting relief by default when there are also  
14 these claims out there that are, you know, deemed -- deemed  
15 allowed if they haven't been objected to. I don't think  
16 the motion is adequate as an objection to claims. I don't  
17 think there's a -- you know, it doesn't say this is a claim  
18 objection to these proofs of claim but that's effectively  
19 would be the result.

20 So on -- with respect to State College there's --  
21 some things are going to be continued today. With respect  
22 to State College I'm going to want you to, you know,  
23 supplement the motion explaining why I should basically  
24 treat those claims as disallowed or file an objection to  
25 the claims themselves.

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1 Mr. de Leest, do you have any issue generally  
2 with the notion of my continuing that for some better  
3 procedural clarification?

4 MR. de LEEST: I do not, Your Honor. Thank you  
5 for that.

6 THE COURT: Okay. All right. And then I have  
7 Robert -- let's see. Robert Thompson. Again, I -- that  
8 sort of started out with talking about certain  
9 (indiscernible), although we meandered a little and I will  
10 give everyone a chance to be heard on everything by the  
11 time we're done.

12 Is there anybody representing Robert Thompson?

13 MR. RENWICK: Yes, this is Edward Renwick. I  
14 represent Robert Thompson. He's actually -- he's part of  
15 the group -- that group that I represent, but he did file  
16 individually initially also and he did file objections, I  
17 know.

18 THE COURT: Okay. All right, Mr. Renwick.

19 The -- focusing on the surface lease --

20 MR. RENWICK: Yes.

21 THE COURT: -- you filed a -- or he filed a proof  
22 of claim #90.

23 MR. RENWICK: Yeah, and --

24 THE COURT: That is a slightly different amount  
25 than the cure amount proposed for the -- Mr. Thompson's

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1 surface lease in the Trustee's motion.

2 MR. RENWICK: Well, yes, probably. The -- I  
3 can --

4 THE COURT: I don't think -- yeah, go ahead.

5 MR. RENWICK: His creditor's claim has been  
6 superseded by a -- by another claim. I thought we had put  
7 that in. The -- that has been superseded by a claim filed  
8 by the Presson Vera OC Land Group and initially he had just  
9 filed a claim on his own for his percentage share. So  
10 they're now all --

11 THE COURT: We're just talk -- we're just talking  
12 about surface rent. We're not talking about percentage  
13 here.

14 MR. RENWICK: I --

15 THE COURT: (Indiscernible) --

16 MR. RENWICK: I understand. But what I'm saying  
17 is that he has -- he filed his objection based on his --  
18 for just his percentage share of both unpaid royalties and  
19 his share of the unpaid surface rents as well.

20 THE COURT: Okay.

21 MR. RENWICK: That's the confusion.

22 THE COURT: Okay.

23 MR. RENWICK: The -- now -- now, I think the  
24 answer is he doesn't have any objection to the -- his  
25 surface is essential -- the essential -- the surface of

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1 that group is essential to the operation of the -- of redo.  
2 And they have -- my clients have no objection to the -- to  
3 that claim being accepted or to the -- to the lease --  
4 surface lease being accepted by the Trustee and he has to  
5 have it in order to operate the unit and we wants the unit  
6 to be operated successfully.

7 We can fight later about how much money they're  
8 owed and when they get paid.

9 THE COURT: Okay. Well --

10 MR. RENWICK: That --

11 THE COURT: Certainly the when to be paid is kind  
12 of inherent in the motion. That is kind of put off in the  
13 future and what the Trustee requested.

14 MR. RENWICK: Well, he --

15 THE COURT: The Trustee's motion listed \$7500  
16 even as the surface lease rent amount owing. But your  
17 client's proof of claim asserts \$7,843.56. So my question  
18 really is to the --

19 MR. RENWICK: Yes, that is --

20 THE COURT: -- to the Trustee is it's \$300  
21 difference. Would you concede that the cure amount is the  
22 higher amount that's reflected in the proof of claim?

23 MR. de LEESE: I would, Your Honor.

24 THE COURT: Okay. Very good. So -- all right.  
25 Hold on. I'm trying to -- all right. Okay.

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1 Again, I'm trying to -- I'm trying to sort of  
2 keep these conceptually separate. With respect to --

3 MR. de LEESE: Yeah.

4 THE COURT: -- any party that has a surface lease  
5 that is the subject of the Trustee's motion is there  
6 anybody that wants to be heard on the issue of assumption  
7 of their surface lease that hasn't been heard so far?

8 (No response.)

9 Okay. Now I made a big deal about the judge  
10 taking notes in the order appeal and I want to just double-  
11 check I make sure I have the right -- kind of the right  
12 party.

13 In terms of the parties that continue to --  
14 putting aside people that had clarification that we've  
15 clarified or would be clarified in order, it seems to me  
16 that there are a handful of parties with surface leases  
17 that object to the assumption of the surface leases. I  
18 want to make sure I have them identified. Okay.

19 I heard BUGANKO. I heard Bradley Land. Are  
20 there other parties that I didn't -- that maybe I didn't  
21 write down properly that have surface leases that continue  
22 to object to the assumption of the surface leases?

23 (No response.)

24 All right. So it's BUGANKO and Bradley Land are  
25 the outstanding objections.

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1                   So this is what I think I'm going to do with  
2 respect to the relief requested on the surface lease. A  
3 lot of what we went through was clarification and Mr. de  
4 Leest explained in most cases if the Trustee was not  
5 seeking relief and -- or that clarified where they were or  
6 I heard people say that they don't have objection to the  
7 assumption of the surface leases and in one case we  
8 clarified the cure amount, I think in one or two instances  
9 involving Mr. Martinez's client there maybe is an open  
10 issue with respect to whether there is a surface lease and  
11 which surface lease it is. And I think that was -- there  
12 was one on Morganti and was it Escolle, Mr. de Leest, that  
13 we have an open issue?

14                   MR. de LEEST: Yes, Your Honor.

15                   THE COURT: Yeah, okay. All right.

16                   So what I'm prepared to do is enter an order  
17 granting the relief requested with respect to all of the  
18 surface leases in which there was no objection. That's how  
19 our system works the -- with the exception -- arguable  
20 exception of those two of Mr. Martinez's clients, Morganti  
21 and Escolle, which with respect to BUGANKO and Bradley Land  
22 I'm going to continue the hearing for a brief period of  
23 time for me to do some more thinking about the arguments  
24 that were made with respect to assumption of the BUGANKO  
25 and Bradley Land surface leases, and I believe our next



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1 omnibus hearing is May 19.

2           So with respect to those, the hearing will be  
3 continued to May 19 at which time now that we've started to  
4 narrow down the number of parties out there, I can focus in  
5 on the arguments that they have made with respect to the  
6 surface leases understanding, of course, that may also  
7 relate to the oil and gas leases.

8           What I'd like to do now is sort of go through and  
9 see if there's anyone that has anything additional; we have  
10 argument on the oil and gas leases other than what a few  
11 people have mentioned, make sure everyone has a chance to  
12 be heard.

13           As I said earlier, with respect to the oil and  
14 gas leases essentially the Trustee has filed a motion  
15 seeking to assume the oil and gas leases if they -- if the  
16 Trustee is unsuccessful in the adversary proceeding.  
17 That's basically what I'm being asked to do to continue  
18 that request and consider it further if the Trustee is  
19 unsuccessful.

20           I want to go through sort of all of the parties  
21 we have and see if anybody wants to say anything more about  
22 that request -- that particular request as it relates to  
23 oil and gas. Okay.

24           So we heard from counsel for Mr. Thompson who  
25 indicated that there was no objection -- well, there was no

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1 objection on assuming the surface and it didn't sound like  
2 you had an objection, sir, to basically allowing the motion  
3 with respect to the oil and gas leases to remain pending  
4 and be continued until after the adversary is resolved. Is  
5 that fair?

6 MR. RENWICK: Edward Renwick here. Yes, Your  
7 Honor, that is -- that is fair and I gather we're going to  
8 have some discussion about the -- because this is also --  
9 also scheduled today is the status conference for that  
10 motion and I think there's probably a good deal we will  
11 have to say about that.

12 THE COURT: Okay. Very good. I appreciate it.  
13 All right.

14 Adam Family Trust.

15 MR. MARTINEZ: Your Honor, Vincent Martinez  
16 speaking. We don't have an oil and gas lease on -- it was  
17 just my client which was already addressed in the motion.

18 THE COURT: Okay. I'm sorry, you don't have an  
19 oil and gas or you don't have -- you're saying you don't  
20 have objection on that point?

21 MR. MARTINEZ: We don't have an objection, but I  
22 just wanted to clarify we have no oil and gas lease claim.

23 THE COURT: Okay. Okay. No objection. No oil  
24 and gas lease. Okay. All right.

25 Morganti Ranch.

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1 MR. MARTINEZ: We have no objection in regards to  
2 receive -- I'm sorry (indiscernible).

3 THE COURT: Okay. Thank you. Evenson?

4 MR. MARTINEZ: No objection, Your Honor. Again,  
5 Vince Martinez.

6 THE COURT: Thank you. Bognuda Trust?

7 MR. MARTINEZ: No objection. Again, Vincent  
8 Martinez speaking.

9 THE COURT: All right. And the Escolle Tenants  
10 In Common?

11 MR. MARTINEZ: No objection, Your Honor.

12 THE COURT: Okay. Thank you. Okay. Chamberlin  
13 Oil.

14 MS. GOETZ: Gisele Goetz appearing on behalf of  
15 Chamberlin Oil, Your Honor. We --

16 THE COURT: I'm sorry. Could you say your name  
17 again because I didn't hear you.

18 MS. GOETZ: Gisele Goetz.

19 THE COURT: Oh, Ms. Goetz. Okay. Very good.  
20 Thank you. Go ahead.

21 MS. GOETZ: And Chamberlin Oil. So, Your Honor,  
22 we -- I need a clarification perhaps because as I've been  
23 listening to the Trustee, the Trustee has been indicating  
24 that they are, in fact, paying royalties 60 days in arrears  
25 which would be normal, but we have been producing and not

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1 getting paid. So part of our objection had to do with four  
2 or five months of not getting paid.

3 We have received some sporadic payments, so it --  
4 it's very difficult to tie them into any particular month.  
5 I think we've gotten two. So as I've been listening I'm  
6 realizing that there's some process in place, but it just  
7 doesn't seem to be happening and I'm wondering since part  
8 of our objection is based on not getting paid for another  
9 four or five months whether, in fact, we are going to  
10 receive to the extent that we're producing right away which  
11 I understand that clarification, and the Trustee is able to  
12 sell the oil, are we going to get paid.

13 THE COURT: Okay. Ms. Goetz, let me ask you.

14 MS. GOETZ: Um-hum.

15 THE COURT: Of course, your client is -- is  
16 undoubtedly -- well, I shouldn't say "undoubtedly," but may  
17 have amounts -- royalty amounts that accrued before the  
18 bankruptcy that were not paid. Are you -- are you sort of  
19 excluding that?

20 MS. GOETZ: I am.

21 THE COURT: Like when you said -- okay.  
22 Because --

23 MS. GOETZ: Yes, I am. I'm talking during the  
24 course of the --

25 THE COURT: Okay. Okay.

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1 MS. GOETZ: -- bankruptcy.

2 THE COURT: Okay. During the course of  
3 bankruptcy. Okay.

4 Mr. Israel, you'd be in a position to respond to  
5 that? I mean, I -- it -- it sounds like Ms. Goetz's  
6 client, Chamberlin, the objection has to do with, you know,  
7 oil being sold and not getting paid royalties post-petition  
8 versus the other sorts of arguments that are being made by  
9 BUGANKO and Bradley Land, which have issues with the notion  
10 of the Trustee trying to assume whether it's a surface  
11 lease or an oil and gas leak, sort of assume now and hold  
12 it in abeyance until and unless there's a sale. That  
13 doesn't sound like Ms. Goetz's issue. What can you say  
14 about -- or am I wrong?

15 MS. GOETZ: No, you're -- you are correct because  
16 the amount we're due prepetition was pretty small so the  
17 client is very pragmatic. The Chamberlins are very  
18 pragmatic.

19 We do have another part of our objection and that  
20 is simply our effort to preserve our rights with respect to  
21 the whole rabbit hole argument that a lease is not a lease  
22 because in the state of California should everything go  
23 wrong here and should we have -- and that with the lease  
24 with orphaned wells we have lease remedies. This is very  
25 specific to a lease being a lease and we have an ability to

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1 pursue prior lessees who assumed our lease at some point in  
2 time to require plugging in abandonment and cure  
3 environmental liabilities. And I have no idea what happens  
4 to those arguments after a bankruptcy determination that a  
5 lease is not a lease.

6 So again, we actually --

7 THE COURT: Well, that -- that --

8 MS. GOETZ: -- preserve our rights. But that  
9 would be -- sorry?

10 THE COURT: That relates more to the subject of  
11 the adversary, does it not?

12 MS. GOETZ: It does relate to the adversary  
13 proceeding.

14 THE COURT: Okay.

15 MS. GOETZ: So again --

16 THE COURT: So much (indiscernible) -- you know,  
17 okay. Not so much the bankruptcy issue of filing a motion  
18 to assume, but that's kind of putting it on ice, so --

19 MS. GOETZ: The -- so the client does not like  
20 that, but the client understands that because in this  
21 environment that is -- you know, delay is inevitable.

22 THE COURT: Okay. Thank you. I think I  
23 understand.

24 Mr. Israel or who -- whichever of your colleagues  
25 is anointed, what -- what's your response on Goetz? It

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1 sounds like their objection has to do with getting their  
2 post-petition royalties and maybe -- maybe that can be  
3 sorted out.

4 MR. ISRAEL: Your Honor, this is Eric Israel.  
5 Yes, I don't have the royalty chart. There were many  
6 checks that's allowed, you know, each time the royalties  
7 are cut. And I know the debtor's payback wasn't always  
8 correct about addresses, so I don't know if this is in the  
9 category of, you know, the check went to a wrong address or  
10 these wells aren't being -- you know, weren't producing in  
11 particular months, but I can say if Ms. Goetz calls or  
12 emails me we will get it figured out.

13 THE COURT: Okay. All right. I'm going to make  
14 a little note here. I understand the issue. I appreciate  
15 it.

16 Now, I note that BUGANKO filed something in the  
17 nature of a joinder and I don't really -- and I saw the  
18 Trustee's reply. I don't -- I don't really get what  
19 BUGANKO's issue is here and maybe counsel for BUGANKO can  
20 explain. Is there relief being requested with respect  
21 to --

22 MS. GRANT: Yes.

23 THE COURT: Okay. And did you file an objection?

24 MS. GRANT: Karen Grant -- well, Karen Grant on  
25 behalf of BUGANKO. And as I indicated initially, we filed

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1 a joinder, probably titled it wrong, but we also put -- you  
2 can brief objections in it and one of them was that with  
3 regard to the oil and gas leases the Trustee's assumption  
4 was somewhat tentative and --

5 THE COURT: No, I understand.

6 MS. GRANT: -- (indiscernible) their rights,  
7 so --

8 THE COURT: I understand.

9 MS. GRANT: -- we did put that in the pleading.

10 THE COURT: But you -- okay, but -- and something  
11 you titled a joinder --

12 MS. GRANT: I --

13 THE COURT: -- to an opposition. Yeah, okay.

14 MS. GRANT: I --

15 THE COURT: Procedurally I don't think that's  
16 kosher, but the Trustee did -- you know, the Trustee did  
17 reply to it. I'll have to figure out what to do with that.

18 Okay. All right. Bradley Lighthouse.

19 MS. GRANT: Your Honor, Karen Grant.

20 THE COURT: Yes.

21 MS. GRANT: We don't have an opposition to the  
22 continuance of the motion with regards to the leases.

23 THE COURT: Oh, you don't?

24 MS. GRANT: No. We have objection to the motion  
25 with regards to the oil and gas leases, but if the Court is



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1 going to continue this matter, we have no objection to  
2 that.

3 THE COURT: All right. Well, that -- I  
4 appreciate that. That's an important clarification. If  
5 that's true, then I believe the only outstanding objection  
6 to the continuance of the motion is from Bradley Land.

7 MS. GRANT, is that true also -- now I'm trying to  
8 remember here. You have a -- now, is that your -- you  
9 know, and can you clarify? We talked earlier about the  
10 BUGANKO surface lease. You still have a substantive issue  
11 with assumption of the surface lease?

12 MS. GRANT: Correct.

13 THE COURT: Which is something the Trustee --

14 MS. GRANT: With regards to again what was --

15 THE COURT: Okay.

16 MS. GRANT: -- stated was that it -- it -- there  
17 was no provision for cure for -- or adequate assurance.

18 THE COURT: Okay.

19 MS. GRANT: And --

20 THE COURT: Now --

21 MS. GRANT: -- if we continue that issue that's  
22 related to the May 19th, that's fine.

23 THE COURT: Okay. All right. Now I get it.  
24 You're clarifying, though, as to oil and gas leases and the  
25 request that that be continued until after the adversary is

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1 adjudicated or resolved. When it comes to oil and gas  
2 leases, you have no objection. Is that correct?

3 MS. GRANT: Well, other than the fact that  
4 they -- they are reserving their right to not assume it if  
5 it's determined to be a 365. I mean, it is applicable  
6 but --

7 THE COURT: Okay. So you do have --

8 MS. GRANT: -- if the Court wants to --

9 THE COURT: You do have an issue with  
10 continuance.

11 MS. GRANT: No, I -- no, I mean, I --

12 THE COURT: That's what I'm trying to  
13 (indiscernible) --

14 MS. GRANT: Not -- no, I want to be clear, Your  
15 Honor. I don't have an issue with the continuance of that  
16 portion of the motion to let that be determined, but they  
17 still have to clarify in their motion whether they're going  
18 to assume or not assume.

19 THE COURT: Okay. I think there -- I hear what  
20 you're saying, but I -- sort of. I mean, they're asking  
21 for -- and I get your position on the surface lease.

22 On the oil and gas leases -- well, on the surface  
23 leases they're expressly asking that they be allowed to  
24 assume those today with cure later and I get you object to  
25 that and that issue is continued to May 19th, fully

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1 preserved. We're on the same page.

2 With respect to your oil and gas leases, they're  
3 asking that the -- in a -- in a hearing on assumption of  
4 the oil and gas leases not take place until September or  
5 thereafter whenever the adversary has been adjudicated or  
6 otherwise resolved and so when you say you don't have an  
7 objection to continuing they're asking that that be  
8 continued much farther out.

9 MS. GRANT: I understand, Your Honor.

10 THE COURT: Until after the adversary and you  
11 don't have an --

12 MS. GRANT: I understand, Your Honor.

13 THE COURT: -- objection to that?

14 MS. GRANT: No.

15 THE COURT: Okay. Got it. Perfect. Thank you.

16 Okay. That -- okay. So then we have Bradley  
17 Land and Laor and I think you made your views clear  
18 earlier, which is you -- you object though to assumption of  
19 the -- assumption of the surface leases under the current  
20 circumstances or maybe you didn't have any. But you  
21 definitely objected to the continuance of the relief on the  
22 oil and gas leases. Is that right?

23 MS. RHIM: Your Honor, this is Alexandra Rhim on  
24 behalf of Laor and Guarantee. That is true. I would add  
25 just as a clarification that if the Court is inclined to

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1 defer all of the issues regarding the oil and gas leases  
2 that that is without prejudice to the ability of parties to  
3 seek other relief. For instance, if facts come to light or  
4 there are circumstances that require rejection prior to a  
5 full determination of the adversary and I understand the  
6 factors, you know, there's some overlap there. There may  
7 be, but I just want to make that clear. It's without  
8 prejudice to those sorts of rights.

9 THE COURT: Okay. Mr. de Leest, do you want to  
10 respond to that, because I --

11 MR. de LEEST: Sorry, Your Honor. I had you on  
12 mute. I think if I understand counsel's position as to  
13 Laor in here it is that they don't oppose the request in  
14 the motion that though this should be put off until the  
15 adversary proceeding is concluded or the issue is resolved  
16 in the adversary proceeding probably more accurately  
17 stated. Is that correct?

18 THE COURT: Ms. Rhim, you want to clarify?

19 MS. RHIM: That is correct, that we do not have a  
20 problem with the issues being deferred. However, I don't  
21 want that to be construed as time on my hands and  
22 channeling those issues into -- into that determination  
23 because as a practical matter, what I'm fearful is that  
24 this adversary proceeding, if it were to go on for six  
25 months or longer, we don't get a ruling until then. But if

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1 there are circumstances or something happens where we need  
2 sooner relief with respect to our leases, I want to be able  
3 to file a motion and I don't want it to be deemed, you  
4 know, a waiver of that ability to get sooner relief.

5 THE COURT: Okay. I think I get it. Did you get  
6 it, Mr. de Leest?

7 MR. de LEEST: I do, Your Honor. And I -- I  
8 don't think we opposed that. I'm not certain what that  
9 form of relief would take, but I don't think we're close to  
10 that preservation.

11 THE COURT: Okay. All right. And so then that  
12 leaves Bradley.

13 MR. HOLMAN: Yes, Your Honor. This is Brian  
14 Holman, Musick Peeler & Garrett, for Bradley. Our petition  
15 with respect to the oil and gas leases is essentially  
16 similar to that with respect to the surface leases. First  
17 we have the substantive objections that there's no prompt  
18 assurance of cure -- any cure is to be deferred until it's  
19 when there is a sale.

20 With respect to the oil and gas leases we have  
21 post-petition defaults, we've only received two payments,  
22 even though there's been production for many months after  
23 the bankruptcy.

24 THE COURT: Okay.

25 MR. HOLMAN: And also --

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1 THE COURT: Well, so -- so -- and I understand  
2 the substantive -- in terms of sort of substantively  
3 they're not being cured now, but there's sort of a request  
4 that the hearing on assumption of the oil and gas leases be  
5 continued until the issues in the adversary are sorted out.  
6 And so you oppose that, right?

7 MR. HOLMAN: Well --

8 THE COURT: Or do you?

9 MR. HOLMAN: To be precise --

10 THE COURT: Wait. Oh, this --

11 MR. HOLMAN: -- we reserve --

12 THE COURT: If you get -- if you get comfortable  
13 that you're getting paid your post-petition royalty are you  
14 as concerned?

15 MR. HOLMAN: Your Honor, we reserve the objection  
16 that this is not a true assumption of rejection. If the  
17 Trustee is seeking an extension of time to make a selection  
18 the adversary proceeding can come out perhaps one of two  
19 ways: one is what the Trustee seeks a declaration that  
20 these are not executory contracts for unexpired leases of  
21 non-residential real property; and second, the Court could  
22 find they're executory contracts and not subject to the  
23 February 22 deadline for assumption or rejection; or,  
24 third, the Court could find they are leases of non-  
25 residential real property in which case it would be our

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1 argument that the Trustee failed to assume them timely and  
2 therefore can no longer assume them.

3 I don't mind having the hearing deferred as long  
4 as it's not deemed a waiver of our objection that the  
5 leases were not properly assumed in a timely fashion.

6 THE COURT: Okay. Mr. de Leest, do you want to  
7 respond to that because if -- and I'm not trying to put  
8 pressure on you, but if -- if you're -- if that's relief  
9 that the Trustee can live with and the parties can work  
10 out -- you know, work out a form of order that they're  
11 comfortable with as to your relief on the oil and gas  
12 leases that you're asking for today, which is essentially  
13 that the hearing be continued, I think there's no  
14 opposition left. If not, then I'll -- you know, I may have  
15 to continue it to our main calendar but I'll, you know,  
16 focus in on the arguments of Bradley and rule.

17 But it sounds like Bradley is giving you an out  
18 if you -- you know, it's not an out. You know, sort of a  
19 description of the issue that they're trying to preserve  
20 and maybe -- maybe their objection if you're willing to  
21 allow them to preserve that issue, their remaining  
22 objection goes away. So what's your response?

23 MR. de LEEST: Your Honor, I think counsel's  
24 suggestion is very reasonable. We're okay with that.

25 THE COURT: Okay. All right, then.

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1 Now, is there anyone that wants to be heard on  
2 the -- on a request for relief as it is today with respect  
3 to the oil and gas leases, which is that the motion remain  
4 pending and be continued to -- what's the date in September  
5 you asked for, Mr. de Leest?

6 MR. de LEEST: Your Honor, my apologies. I can  
7 look it up. I don't recall. We said three to four months  
8 and it would be at the next September stacking date.

9 THE COURT: Okay. Hold on. I can tell you.  
10 That's September 29th. Okay.

11 MS. RHIM: Your Honor, this is Alexandra Rhim.  
12 Could I be heard on the scheduling issue?

13 THE COURT: Yes, please.

14 MS. RHIM: My understanding is that the Trustee  
15 is intending to bring a dispositive motion by I think it  
16 was May 4, which is the extended date. So I'm not sure how  
17 we would track that motion because that motion may dispose  
18 of all of the contract assumption issues and I know the  
19 motion hasn't been filed, so we don't know when that will  
20 be heard, but I want to be mindful of that and not continue  
21 out this motion longer than it needs to be.

22 THE COURT: All right. Well, I'm also concerned  
23 about continuing things more than we need to and I would  
24 certainly if subsequent events are such that, you know,  
25 there's no need for that additional time, you can always



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1 being a motion for cause, argue that the hearing ought to  
2 be advanced.

3 MS. RHIM: Your Honor, just as a last comment  
4 then, is it -- would it --

5 THE COURT: Yeah.

6 MS. RHIM: -- be possible at all to continue this  
7 to the May 19 date, which is the date of the continuance  
8 for the service leases, and at that time we would know  
9 whether the motion for summary judgment has been brought  
10 and we would know the hearing date on that?

11 THE COURT: Okay. Mr. de Leest?

12 MR. de LEESE: My only comment, Your Honor, is  
13 that it's stated -- it would make more sense to continue  
14 that further and then allow us to advance the hearing, if  
15 need be, to an earlier date once we have that. The hearing  
16 on the MSJ, even if it's filed by the 4th, won't be for 30  
17 days or more depending on the Court's availability and I  
18 would think that that may be too soon if we get the May  
19 19th date and we'll suggest a later date if appropriate.

20 THE COURT: Okay. Ms. Rhim, I understand your  
21 concern and I'm not trying to prejudice your client's  
22 rights, but it -- we can -- I am happy again for a couple  
23 of pages of paper. You know, you can bring a motion and  
24 ask me to advance it if circumstances change.  
25 Realistically this is sort of a big issue. I am -- I'm not

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1 likely to rule from the bench. I rarely do on summary  
2 judgment motions and there's some, you know, intricately  
3 issues here. So I'd just as soon leave us the briefing  
4 room and not have everybody coming back on the motion  
5 prematurely, but it's absolutely without prejudice to your  
6 ability to -- to seek to advance that hearing if you think  
7 there's good reason to. Okay.

8 MS. RHIM: Your Honor, that's fine. I just  
9 wanted to air my concerns and with that, that's fine.

10 THE COURT: Your concerns are duly noted and  
11 like not just noted on the record. They're noted with me.  
12 I get it.

13 All right. So with respect to the oil and gas  
14 leases and, again, this continuance, are there any -- is  
15 there anyone else that wanted to be heard that hasn't had a  
16 chance to be heard. I believe all of the objections that  
17 we've heard are essentially being accommodated and will be  
18 accommodated in the form of order in the form of, you know,  
19 preservation of rights and clarifications and whatnot.

20 Anyone else want to be heard? All right --

21 MR. ROTH-MOORE: Your Honor, I --

22 THE COURT: Yes?

23 MR. ROTH-MOORE: This is Andrew Roth-Moore. I'm  
24 with Brownstein Hyatt Farber Schreck. I'm co-counsel with  
25 Mitch Langberg. We represent Grundoon (phonetic), LLC who

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1 has a surface lease. Unfortunately, Mr. Langberg's line  
2 has dropped and he hasn't been able to get back on. I have  
3 a pending *pro hac* motion that has not been signed yet, but  
4 I did just want to --

5 THE COURT: That's fine.

6 MR. ROTH-MOORE: -- speak up on a point.

7 THE COURT: That's fine. I'll --

8 MR. ROTH-MOORE: I do apologize.

9 THE COURT: I'm happy to admit you for purposes  
10 of the hearing. That's fine. Go ahead.

11 MR. ROTH-MOORE: Thank you. I do apologize for  
12 the delay. As I said, Grundoon, LLC holds a surface lease.  
13 We had not read the motion to request the release to be  
14 able to assume now and reject as to the surface leases. We  
15 had read it as that's part of the release talking about,  
16 you know, being able rejection of futures being limited to  
17 the oil and gas leases. You know, we'd ask if it's  
18 possible if we could lump ourselves in on the continuation  
19 recognizing that we did not file an objection as to the  
20 issue of the -- just that limited issue of whether or not  
21 the Trustee can go back at a later date and say we're now  
22 going to reject not just because it would allow rejection  
23 but, you know, in case it opens up arguments that, you  
24 know, now that this has been rejected all the payments that  
25 have been made through a certain period given all that, you

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1 know, at -- just on the issue of being able to reject that  
2 the (indiscernible), the only issue that we -- we didn't  
3 read correctly.

4 THE COURT: Okay. Mr. de Leest?

5 MR. de LEEST: Your Honor, I would oppose the  
6 request because it's been noticed properly. We've proposed  
7 a cure amount. I don't think they're objecting to the cure  
8 amount and the terms in the motion --

9 THE COURT: Am I being asked to rule today on  
10 your ability to reject and assume the surface lease at a  
11 future date? Is that part of the relief you were asking  
12 for?

13 MR. de LEEST: I'm sorry, Your Honor. Was that  
14 to me?

15 THE COURT: Yes, to Mr. de Leest.

16 MR. de LEEST: Okay.

17 THE COURT: Is the Trustee asking me to opine and  
18 order once and for all time that if the -- if a lease --  
19 surface lease is assumed it may be rejected in the future?  
20 I understand there's an argument about that, but is that --  
21 you're asking for a ruling today on that issue?

22 MR. de LEEST: The motion did request that we --  
23 you know, that we have the ability up through the time of  
24 assumption to reject the leases if we had a dispute  
25 particularly with a cure amount. Here there's no dispute

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1 with respect to --

2 THE COURT: Up until the time of assumption.

3 Well --

4 MR. de LEEST: -- cure amount.

5 THE COURT: Okay. You are -- you're asking me  
6 for an order assuming the leases presently so --

7 MR. de LEEST: Correct.

8 THE COURT: -- what -- when is the motion of  
9 assumption if not when the order is entered of the  
10 surface --

11 MR. de LEEST: Your Honor, if you give us an  
12 order as to the surface lease that's when they would be  
13 assumed.

14 THE COURT: Okay. So as you asking for the  
15 ability to reject up until the time an order is entered on  
16 the surface leases or at sometime in the future after that  
17 assumption?

18 MR. de LEEST: Your Honor, with  
19 (indiscernible) --

20 THE COURT: That's (indiscernible) different  
21 things.

22 MR. de LEEST: Yes. No, I understand.

23 THE COURT: Go ahead.

24 MR. de LEEST: No. I think you're only asking up  
25 until the time of assumption, particularly if there's a

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1 dispute as to a cure amount. Here there is no dispute, it  
2 seems. There's not a dispute of a cure amount. They  
3 haven't filed papers.

4 THE COURT: Right. Okay. So then let me turn --  
5 and I'm sorry. Do you -- I had Mr. Lambert's name down but  
6 I didn't get your name -- his colleague who stepped in.

7 MR. ROTH-MOORE: Mr. Roth-Moore. Andy Roth-  
8 Moore. Last name is hyphenated. It's R-O-T-H hyphen M-O-  
9 O-R-E.

10 THE COURT: Okay. Very good. Roth-Moore. Thank  
11 you, sir.

12 So Mr. Roth-Moore, the clarification that's  
13 offered is that they're only trying to assert the ability  
14 to change their mind up until entry of -- entry of this  
15 order on approving the assumption of the surface leases.  
16 If that's the case I don't think it's terribly  
17 controversial and I -- but, you know, I ask you if you're  
18 pressing your objection subject to that clarification.

19 MR. ROTH-MOORE: I -- we do not contest the  
20 amount of cure. To the extent that they're now  
21 representing that once the Trustee gets an order assuming  
22 the surface leases they are not going to read the order  
23 granting this motion as giving them authority to then  
24 subsequently reject when we get to the time of the sale, I  
25 agree with Your Honor. We do not have an issue.

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1           If, however, they're saying, you know, we assume  
2 subject to this tale of ability to reject that would be the  
3 sole issue that we would -- we would ask leave to be able  
4 to file late objections, too.

5           THE COURT: Okay. All right.

6           Mr. de Leest, and you're comfortable with your  
7 clar -- if you're comfortable with that and that really was  
8 your intent, then it sounds like the objection is, you  
9 know, resolved. If on further contemplation that's not  
10 what your intention is, it really was sort of broader  
11 relief to which, you know, nobody responded I'm -- I'd say,  
12 you know, you should carve Mr. Roth-Moore's client out and  
13 continue the matter to the May date in which case he can  
14 file his opposition two weeks before; you could file your  
15 reply one week before.

16           But if you're comfortable that all you were doing  
17 was trying to preserve, you know, the ability to reject up  
18 until the time of this order on these surface leases as  
19 entered, then I think the objection goes away and you can  
20 include him. Mr. de Leest, do you want to say anything?

21           MR. de LEEST: I apologize again, Your Honor.  
22 I've had you on mute. I will include him in the order.

23           THE COURT: Okay. All right.

24           MS. GRANT: Your Honor --

25           THE COURT: All right. Sorry. It's been a

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1 long -- yes. Ms. Grant.

2 MS. GRANT: Again, I just want clarification  
3 having heard what Mr. de Leest has said because in the  
4 motion on page 7 it states the Trustee reserves the right  
5 in the future to reject any of the surface leases if  
6 appropriate including if such leases are not included as  
7 part of a sale. If they are amending that, then I need --  
8 that provision then, you know, I think they need to be  
9 clear about that.

10 THE COURT: Okay. Are you asking for any relief  
11 from the Court with respect to that statement? I mean, you  
12 know, people can reserve rights till they're blue in the  
13 face unless they get an order from the Court recognizing  
14 that right then, you know, reservation of rights may or may  
15 not be affected.

16 Mr. de Leest?

17 MR. de LEEST: Your Honor, I think the -- the  
18 reason I -- we're talking about a couple of different  
19 things. Here there's -- there's the opportunity to reject  
20 the four assumptions and then there are cases out there  
21 that talk about what you do after assumption in the event  
22 that a rejection is necessary. The Trustee still has that  
23 option I think, you know, to reject -- after assumption  
24 whether or not we reserved it if that's what the case law  
25 provides.



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1 THE COURT: Right. But you -- again, just to  
2 clarify, you're not asking me to rule on any post -- on  
3 your ability to -- one way or the other. You'd have to,  
4 you know, do it and people would have to have a chance to  
5 respond to your request to do it and that presumably would  
6 be the time to argue over whether you -- whether the  
7 Trustee could or couldn't do it. You're not asking me to  
8 do anything today in the order you're asking for today with  
9 respect to the circumstances that would adjudicate that  
10 issue, right?

11 MR. de LEESE: That's correct.

12 THE COURT: Okay. Ms. Grant, does that clarify  
13 for you?

14 MS. GRANT: Yes, Your Honor.

15 THE COURT: Okay. All right. Good. Last call.  
16 Anybody else? All right. On the oil and gas leases -- on  
17 the oil and gas leases the court will go ahead and grant  
18 the relief requested in the short term subject to all the  
19 caveats we've discussed. And by that I mean, continuing  
20 the hearing on the relief requested with respect to the oil  
21 and gas leases to September 29.

22 Again, just to recap with respect to the surface  
23 leases the hearing is continued with respect to BUGANKO and  
24 Bradley Land. I'm not inviting any additional briefing but  
25 now that we've kind of cleared the deck a little I can

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1 focus on the particular argument, the legal authority that  
2 the Trustee on the one hand and BUGANKO and Bradley Land on  
3 the other hand offer with respect to the assumption of the  
4 surface lease at this time under the circumstances  
5 presented and under the terms proposed by the Trustee.

6 There were -- there's outstanding issues with respect to  
7 Morganti and Escolle and so relief as to surface leases if  
8 they exist for Morganti and Escolle, that will be continued  
9 and hopefully the parties will work -- will work that out.

10 Is there anything on #1.00, the motion for  
11 relief with respect to assumption, rejection, et cetera,  
12 anything that somebody thinks I need to clarify or say that  
13 I haven't already said?

14 MR. RHIM: Your Honor, this is Alexandra Rhim.  
15 Question about the continued hearing set for September  
16 29th. Will that be treated as a status conference or --  
17 okay, because that is what was requested in the motion and,  
18 therefore, if we required additional briefing or  
19 evidentiary hearing those can be heard at another time.

20 THE COURT: Yeah. No, certainly not going to  
21 grant this request and then allow anyone to feel sandbagged  
22 about evidence. And I do think that if -- you know, if  
23 the -- if the need for the -- you know, depending on what  
24 happens in the adversary proceeding we'll have to see. And  
25 then if there's still a live motion I think, you know,

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1 we're going to have to get evidence of the world as it  
2 exists then in order to assess so we'll have to set some  
3 dates and give everybody an opportunity to be heard and to  
4 create a record. Okay.

5 All right. Then, Mr. de Leest, I'm going to  
6 charge you because it's probably you or others that work  
7 for the Trustee to prepare orders that memorialize today's  
8 release. I think, you know, it might make sense at least  
9 to break off the order on the rejection of the  
10 (indiscernible) and the warehouse lease and maybe even  
11 break out a separate order the relief with respect to the  
12 surface leases as opposed to the oil and gas leases, but  
13 I'll leave it to you whatever you think is more efficient.

14 We have a process in our district for resolving  
15 the form of an order -- or I should say there's a formal  
16 process and an informal process. The infor -- I much  
17 prefer the informal process and I don't think that there's  
18 any emergency that justifies at least not trying to  
19 circulate to all parties that appeared and any way objected  
20 or even if they get a protective objection or sought a  
21 clarification that those folks should be given the  
22 opportunity before you lodge the order to review it and  
23 comment on it and try to resolve the terms of the order  
24 after which if they're satisfied they would sign the order  
25 indicating that they approve as to form or have no

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1 objection to the form of the order. Either one of those is  
2 acceptable.

3           People sometimes ask me, Judge, how do you do  
4 that because, you know, you have to lodge an order  
5 electronically in Microsoft Word. The answer is that you  
6 can lodge an exhibit to a proposed order and that exhibit  
7 should be the scanned .pdf file containing the various  
8 lawyers' signatures.

9           If you are not able to obtain the signature of  
10 every lawyer who -- with respect to the form of the order,  
11 then, Mr. de Leest, I would recommend to you our process  
12 for filing a notice of lodgment lodging the order and  
13 giving notice to parties of their opportunity to file a  
14 formal objection to the form of the order, which they have  
15 said that they would do. And I don't see an urgency here  
16 to shorten that time if you are not able to do it  
17 consensually.

18           So like I said, there's the informal -- and those  
19 of you that, you know, have pending objections, the -- it's  
20 only -- you're only being asked to sign the -- you know,  
21 sign into the form of the order, not necessarily agree with  
22 my ruling, so -- just to underscore that for anybody that's  
23 unfamiliar with our process. Any questions about that?

24           (No response.)

25           All right. We've been going for a little over

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1 three hours. I think it's time for everyone to have a  
2 break to get up and stretch and use the restroom if you  
3 need to. When we come back from our recess we will take up  
4 the status conference on the adversaries and then hopefully  
5 sort of pick up the momentum and clear -- clear off the  
6 rest of our calendar. Let's take ten minutes. What does  
7 my clock say? My clock says it's 1:14. We'll reconvene at  
8 about 1:24. The line will stay open.

9 Let me just ask the courtroom deputy in Santa  
10 Barbara, would you prefer that we simply stay on the record  
11 or can we go off the record for those ten minutes and then  
12 restart?

13 THE CLERK: Yeah, we can go off the record and  
14 then pick it up in ten minutes.

15 THE COURT: Okay. All right. Then let's do  
16 that. We'll go off the record but we'll leave everybody,  
17 you know, on the line and I'll see you in a few minutes.  
18 Thank you.

19 (Off the record at 1:15 p.m. Back on the record  
20 at 1:24 p.m.)

21 THE COURT: Okay. We're back on the record. One  
22 just sort of clean-up matter -- oh, I just wanted to  
23 mention, Mr. de Leest, that I had tried to summarize kind  
24 of things where we were on #1.00, the assumption and  
25 rejection related matter at motion and I neglected to

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1 mention State College. That's one where sort of have to  
2 address in the order. We'll continue that one, I guess. I  
3 gave you some options concerning dealing with it. Does  
4 that make sense, Mr. de Leest?

5 MR. ISRAEL: Your Honor, this is Eric Israel.  
6 Mr. de Leest dropped off thinking that the matter was over,  
7 but I will tell him to continue State College as well if  
8 that's your -- what should be in the order as well?

9 THE COURT: Yeah, yeah. And then, you know, I  
10 sort of suggested a couple of different ways. I mean, if  
11 you -- if you think you can ignore the proofs of claim that  
12 were filed and do a *de facto* claims objection, sort of  
13 invited you to brief that or just file an objection to the  
14 claims or get him to withdraw the claims that you don't  
15 agree with, just kind of created a problem there where  
16 the -- where it seems -- and I know when there are lots of  
17 contracts sometimes it's confusing, but it seems that the  
18 cure amount was inconsistent with the proofs of claim  
19 collectively and was sort of the *sub rosa* objection. So  
20 I'm open-minded, but I need you to address it.

21 MR. ISRAEL: We will do so, Your Honor. Thank  
22 you.

23 THE COURT: Okay. All right. Very good. All  
24 right. Let's see. I don't know -- I'm assuming everybody  
25 is back in terms of the audio conference. I note that some

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1 of the folks that were participating by video are no longer  
2 participating, but that's okay. I'm going to keep going.  
3 All right. Where's my chart?

4 So, Mr. Israel, are you going to handle the  
5 status conference on the adversary or is that another one  
6 of your colleagues?

7 MR. ISRAEL: That will be Mr. Zev Shectman.

8 THE COURT: Okay. Mr. Shectman, you're up.  
9 Mr. Shectman, I sort of have an over-arching question about  
10 the litigation that was raised by one of the parties'  
11 objection pleading and that had to do with discovery and  
12 whether it would be streamlined by uploading documents to  
13 a -- you know, a document room and making them available to  
14 parties. What can you say about that? Is that something  
15 that --

16 MR. SHECTMAN: Thank you, Your Honor. Thank you,  
17 Your Honor. Zev Shectman of Danning Gill on behalf of the  
18 Trustee plaintiff and counter-claimant in this adversary  
19 proceeding.

20 The answer to that is we have a lot of lease  
21 documents. We have hundreds of .pdfs and we have actually  
22 been in the process and are nearly completing the process  
23 of assembling a ten-volume appendix of the leases that I  
24 think is what people are referring to. For purposes of the  
25 motion for summary judgment we believe that's the primary

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1 source that may be relevant to parties and

2 the plan will be to create a navigable e-filing appendix.

3 The way that I envision it is that there's about

4 ten volumes ranging from under 100 pages to hundreds and

5 hundreds of pages and it's organized with an index so that

6 the hope is that those of us who are e-filers will be able

7 to accept everything with ease and if Your Honor that would

8 be how we would -- how we would handle that.

9 My hope is that we have that --

10 THE COURT: Let me stop -- let me stop there and

11 make sure I understand what you're saying. So you're

12 not -- there are key documents that are relevant to this

13 litigation. You're asking me to determine whether, for

14 instance, a particular instrument is a lease for purposes

15 of Section 365. If you're not exchanging those with the

16 parties that have appeared in the matter, which I believe

17 you have an obligation to do under Rule 26, you're just

18 going to kind of hold onto them and wait until you file a

19 motion for summary judgment, that's your plan?

20 MR. SHECTMAN: We provided -- in our initial

21 disclosures we provided what we were going to do with it.

22 We look -- we've been going through a process of assembling

23 these documents. We didn't want to do it in a half-baked,

24 you know --

25 THE COURT: Well, I get that.



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1 MR. SHECTMAN: -- messy fashion.

2 THE COURT: I get that. Nobody wants messy.

3 We're all against messy.

4 Hey, Mr. Jones, are you against messy?

5 MR. JONES: (No response)

6 THE COURT: I saw you smile. Sorry to put you on  
7 the spot. It's okay.

8 Yeah, it's fine. I get that. But it's -- that's  
9 not the same as complying with your obligation under  
10 Rule 26. Whether it's a dispute over a contract, you know,  
11 it seems to me that there is no -- there is no question  
12 that the contract is one of those things that you have an  
13 obligation to provide in the initial disclosure under  
14 Rule 26. Did I understand you to say that you didn't  
15 actually provide it? Ands again, we're only talking about  
16 the parties that have appeared. The parties that have not  
17 appeared have not appeared. You can't have a conversation  
18 with them. But the parties that have appeared, I think you  
19 have an obligation to give them the contract or contracts  
20 of theirs that are the subject of this dispute. And I  
21 don't think having them wait for this contract to be in a  
22 motion for summary judgment to which they have only so many  
23 weeks to reply is complying with Rule 26. I just don't.

24 MR. SHECTMAN: Well, there's a few points that I  
25 can address there. First of all, we believe that the

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1 motion for summary judgment addresses a legal issue and  
2 that -- and that the factual issues that could arrive with  
3 respect to the contract are not germane to the legal issue  
4 that we are --

5 THE COURT: Okay. I'll stop --

6 MR. SHECTMAN: -- going to be asking you to  
7 resolve.

8 THE COURT: I'll stop you there. I've heard  
9 that -- I've heard that argument. I mean, I've seen that  
10 argument in the papers. I'm not yet persuaded that that is  
11 true and I think that's an invitation for disaster. I  
12 think that could be reversal error for me to characterize a  
13 contract without looking at the contract.

14 All right. Go ahead. I'm not in love with that  
15 argument. Keep going.

16 MR. SHECTMAN: The other thing that I wanted to  
17 say is that we are not against giving people the time that  
18 they need to address issues that we are raising and, in  
19 fact, we -- we have a consensus surrounding giving people  
20 the time that's necessary to work out these issues in an  
21 appropriate way. And we can also -- you know, given that  
22 there's a more finite number of people who have answered,  
23 we can produce -- we can talk to everybody who has answered  
24 and is participating and make sure that they have the  
25 documents that we have that they need to see. We can do

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1 that in advance --

2 THE COURT: Thank you. That's all I'm asking.

3 MR. SHECTMAN: -- of -- in advance of -- in  
4 advance of the filing.

5 THE COURT: Okay. Thank you. That's all I'm  
6 asking.

7 MR. SHECTMAN: Okay.

8 THE COURT: Okay. At least at this point. We're  
9 going to go through and hear from everybody that is  
10 attending, but --

11 MR. SHECTMAN: We can focus on getting them what  
12 they need.

13 THE COURT: You know, look. I understand -- I  
14 get it. You go and explain this and there's a lot of  
15 contracts and some of them are written on, you know,  
16 parchment or papyrus. They're old and maybe can't find  
17 them all and you're trying to organize them and analyze  
18 them. You know, but you've got to, you know, presumably be  
19 scanning them into something so that you can then fulfill  
20 your obligations under Rule 26. So okay. Well, that makes  
21 me feel a little better.

22 Let me just say generally -- and this sort of --  
23 tell everybody how we're going to go through these. First  
24 of all, I am dividing the world into those adversaries.  
25 Obviously we have the adversaries where people aren't here

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1 and I'll deal with that -- I think we'll deal with that at  
2 the end. But I think the less complicated ones in a sense  
3 are the ones where there are no counterclaims or cross-  
4 claims. And so I'm going to go through those parties first  
5 and invite their counsel to be heard.

6 But first what I want to tell you is where --  
7 where I think I'm going so that counsel can respond to it.  
8 I'm inclined to set July 17, 2020 -- July 17 -- 7/17/2020  
9 as (1) the discovery cutoff, (2) the deadline to amend the  
10 pleadings with the understanding that discovery might be  
11 likely -- might be to carry open in some form -- in some  
12 posture or another if it's determined that those gas leases  
13 are subject to Section 365 and cure amounts become a  
14 relevant issue. Right now they aren't.

15 And right now, Mr. Shectman has said that the  
16 parties that have appeared and answered are going to as  
17 soon as practicable get a copy of the -- those are their  
18 agreements that are the subject of the lawsuit. So those  
19 are probably, you know, the bulk of the discovery given  
20 that these are declaratory relief actions. Again, it's set  
21 for the counterclaims and the cross-claims.

22 I would set August 11, 2020 as the deadline for  
23 the filing of case dispositive motions and set September 29  
24 as the deadline for those motions to be heard. All right.  
25 Other than that, I don't have any plans to set any other

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1 dates. Oh, let me just say as a general matter before we  
2 get -- we drill down that I would continue the status  
3 conference to May 19th at 10:00 a.m., which is the date set  
4 by the clerk's office for a status conference in those  
5 matters that have counterclaims or cross-claims. I'm not  
6 really sure why the -- why the clerk's office did that, but  
7 they did and I would require an updated joint status report  
8 to be filed by May 4th but only as to those parties who did  
9 not participate in this amended joint status report.

10 So if you've got some folks that emerge that  
11 suddenly show up and want to participate, you know, want to  
12 supplement your joint status report, other than that I  
13 don't need any more joint status reports. Okay. That's --  
14 that's kind of my -- that's my proposal for setting  
15 deadlines in dealing with these adversaries. And by the  
16 way, I'm referring to #7.00 on today's calendar, #7.00, the  
17 stat conference in the declaratory relief action. We'll  
18 talk about the other adversary separately.

19 Before I ask the defendants, Mr. Shectman, have  
20 any issues with my tentative schedule?

21 MR. SHECTMAN: No issues. That all sounds good.  
22 I might have some other housekeeping matters, but in  
23 general this is fine.

24 THE COURT: Okay. Any of your other general  
25 housekeeping matters, things that make sense to mention now

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1 before the defendants could go one by one through the  
2 defendants to respond or does it relate to other parties?

3 MR. SHECTMAN: I guess one of these -- one of  
4 this I guess substantive issues would be that as to  
5 discovery one question would be whether that needs to be  
6 considered in light of the timing of the motion for summary  
7 judgment and whether -- I think if the Court sets a cutoff  
8 date whether that's going to make sense in light of the  
9 timing of the motion for summary judgment in light of  
10 timing and the mediation and how we treat the complaint  
11 vis-à-vis the -- or, you know, versus counterclaim. That's  
12 one issue.

13 THE COURT: Okay. Mr. Sheckman, did you switch  
14 to a speaker phone?

15 MR. SHECTMAN: Oh, sorry about that.

16 THE COURT: I'm not hearing -- I'm not -- no, no,  
17 it's okay. I -- if it -- if it works well, I don't care,  
18 but I couldn't hear you as well.

19 MR. SHECTMAN: Oh, I'm sorry. I'll -- I can do  
20 this.

21 THE COURT: Oh, that's much better. Thank you.  
22 I'm sure everybody appreciates that.

23 MR. SHECTMAN: Yes.

24 THE COURT: Okay. So there's an issue of  
25 discovery and what you're saying is, hey, we're going to

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1 file a summary judgment motion, you know, in let's say May.  
2 What are you asking? Are you asking that I shorten the  
3 discovery cutoff or extend the discovery cutoff?

4 MR. SHECTMAN: I'm asking -- I'm suggesting that  
5 we talk about extending it much further beyond July.

6 THE COURT: Why is that?

7 MR. SHECTMAN: Well, for two reasons that I can  
8 think of off the top of my head and one is that there may  
9 be settlement or mediation; two is that the summary  
10 judgment hearing if it's filed May -- if the motion is  
11 filed May 4th, the first day that it could be heard using  
12 the Court's ordinary procedures would be 42 days later  
13 which I believe, if my math is correct, is June 15th, which  
14 is one of the stacking hearings. So --

15 THE COURT: Right.

16 MR. SHECTMAN: -- do we want to be focused on  
17 discovery during that time period or do you want to be  
18 focused on the motion for summary judgment on the Trustee's  
19 one claim for relief? And I mean, I would think the  
20 counter-claimants to the extent they have issues would want  
21 to have their issues addressed in more time.

22 THE COURT: Why would the -- okay. I'm not sure  
23 why the argument would be focused -- why the argument would  
24 be affected by the discovery cutoff if you think that  
25 argument is going to take place in June or July in the

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1 sense that any party that has an issue with -- you know,  
2 their argument is under Rule 56(e) if they're arguing that  
3 their -- that the Court should not rule on the motion  
4 because more discovery has to take place. That -- that  
5 sort of question is governed by Rule 56(e). It really  
6 doesn't have anything to do with the cutoff in Augu -- in  
7 July. I mean, if I -- someone makes a 56(e) argument and I  
8 sustain a 56(e) argument there's clearly cause for me to  
9 extend the discovery cutoff.

10 Now, you know, but it -- you -- you're -- what  
11 you're concerned about is then that if it's coming up in  
12 July that people will be concerned about completing  
13 discovery that they possibly could put off, is that your  
14 argument?

15 MR. SHECTMAN: So I think the main -- the main  
16 argument is probably that the MSJ that we plan to file is  
17 about one claim for relief and there are ancillary issues  
18 that we don't think are dispositive as to our claim for  
19 relief that may or may not still be relevant after our  
20 MSJ -- our motion for summary judgment is resolved and  
21 though -- you know, those issues if they need to be  
22 addressed should be addressed later in discovery if  
23 necessary at all. We don't really think that discovery is  
24 necessary to -- we don't -- we do not think that discovery  
25 is necessary to resolve our MSJ on the Trustee's complaint.



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1           The other thing I just want to point out is if  
2 there's actual discovery that needs to happen in the  
3 different climate where we're doing these type of hearings  
4 telephonically and such, the same -- you know, there's  
5 going to be issues with discovery broadly in every case and  
6 particularly this case large in the bankruptcy case and in  
7 every proceeding that discovery is necessary.

8           So we really need to be thinking about, you know,  
9 giving a little bit more time for discovery than we  
10 ordinarily we would, you know, handling depositions, how  
11 they're going to be done, they can be done I think through  
12 video but we're going to need to figure all that stuff out.

13           THE COURT: Okay. So what was your -- what --  
14 remind me, then, what was your ask?

15           MR. SHECTMAN: To make -- to put it further out  
16 without prejudice to extending it out further beyond that.  
17 Maybe around the September period would be appropriate.

18           THE COURT: All right. So as I go through with  
19 each of the defendants let me -- I'm going to want to hear  
20 from you. You know what? Before we do that, I want to  
21 take up #5.00. #5.00 is UBS's motion to intervene and this  
22 kind of affects who the universe of parties is. There was  
23 no objection to UBS's motion to intervene. I just want to  
24 offer anybody that's not the opportunity to speak up if I  
25 have that wrong. Is there anyone that's attending the

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1 hearing that objects to UBS's motion to intervene? And I  
2 know that the Trustee was not. I note the written non-  
3 opposition. Is there anyone else that wants to be heard?

4 (No response.)

5 Okay. I -- that motion is granted. Okay.

6 MR. JONES: Your Honor, thank you. Evan Jones on  
7 behalf of UBS. We will submit an appropriate order.

8 THE COURT: Okay. Very good. All right. So let  
9 me start with -- and again, I'm kind of sorted out -- I'm  
10 going to deal with the folks who don't have counterclaims  
11 or cross-claims first.

12 Mr. Beall representing GRL, LLC. Your client --

13 MR. BEALL: Yes.

14 THE COURT: Well, actually, I don't think you  
15 have an issue as to timing because your client --

16 MR. BEALL: No.

17 THE COURT: -- doesn't oppose the relief.  
18 Generally just wants to be in on the discussion regarding  
19 the judgment. So you have no issue with the calendar?

20 MR. BEALL: That's correct, Your Honor. William  
21 Beall, Bell & Burkhardt. Whatever the Court decides and  
22 the other parties decide is fine with us.

23 THE COURT: Okay. All right. Very good.

24 Mr. Wagner representing Candace Lane Evenson and  
25 the Morganti Ranch. Is Mr. Wagner on with us?

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1 (No response.)

2 MR. MARTINEZ: Your Honor, this is Vincent  
3 Martinez --

4 THE COURT: (Indiscernible) yeah. Okay.

5 MR. MARTINEZ: Yeah. Um-hum.

6 THE COURT: Someone put your partner's name in my  
7 chart.

8 MR. MARTINEZ: Yes.

9 THE COURT: No problem. So I guess that was --  
10 unless you wanted to distinguish between the -- or also ask  
11 about the -- well, the (indiscernible) trust. Any  
12 objection to a September 30 discovery cutoff and the other  
13 dates that I mentioned?

14 MR. MARTINEZ: None, Your Honor. And also we'll  
15 be speaking for Escolle Tenants In Common.

16 THE COURT: I'm sorry, for which?

17 MR. MARTINEZ: Escolle, E-S-C-O-L-L-E.

18 THE COURT: Yeah. Escolle, of course. Hold on.  
19 Why is that not on the chart? Does Escolle have a  
20 counterclaim?

21 MR. MARTINEZ: Not right now, no, Your Honor.  
22 No.

23 THE COURT: Okay. Okay. All right. I'm  
24 actually going to revise my suggestion. Let me just tell  
25 you the reason why you're not on the chart, Mr. Martinez,

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1 is we did not see an answer filed by Escolle on the docket.

2 So you may want to (indiscernible) that.

3 MR. MARTINEZ: Yes, Your Honor.

4 THE COURT: And the one (indiscernible) --

5 MR. MARTINEZ: And --

6 THE COURT: Yeah, go ahead.

7 MR. MARTINEZ: I was going to say that we are --  
8 Escolle didn't appear on the motion -- on the adversarial  
9 appeal. That's one of the main parts of the exhibits.  
10 That's why that occurred.

11 THE COURT: Okay. So you're not representing  
12 Escolle on the adversary?

13 MR. MARTINEZ: Because it's not in the  
14 (inaudible).

15 THE COURT: Because what? I'm sorry. I didn't  
16 hear you.

17 MR. MARTINEZ: It's not a main party.

18 THE COURT: It's not a main party. All right.  
19 Very good. If we're good with the discovery cutoff, what I  
20 think we ought to do -- well, let me go back to  
21 Mr. Shectman. If we're going to extend the discovery  
22 cutoff -- and let's say I made it October 16th and we  
23 would -- wouldn't we want to extend the deadline for case  
24 dispositive motion to be filed and heard?

25 MR. SHECTMAN: That would -- I think that would

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1 be a reasonable adjustment.

2 THE COURT: All right. So I guess my proposal  
3 that I'm asking everybody to respond to is 10/16 discovery  
4 cutoff and deadline to amend, add parties or sick leave if  
5 leave is required, October 27 to file case dispositive  
6 motion and December 15 would be the deadline to hear  
7 dispositive motions.

8 But I really do think that people -- people's  
9 positions with respect to -- some people's position with  
10 respect to the prior motion were premised on the idea that  
11 you're going to file your motion in May and we're going to  
12 have a hearing in September.

13 I guess I'll go around the horn and see what  
14 people think. Are you wanting to change that timetable  
15 really? I don't want to put words into your mouth or  
16 change a calendar in a way that you're not even asking me  
17 to change.

18 MR. SHECTMAN: So my thought about the MSJ is  
19 that we're going to file it May 4 but I didn't think we  
20 would have the hearing as late as September. Thought we  
21 would have it sooner.

22 THE COURT: Okay. All right. Well, how about  
23 this. I started out by saying -- I started out by -- first  
24 my -- where are my notes? Well, I started out by saying we  
25 have the -- August 11th would be the deadline to file case

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1 dispositive motions and 929 for such motions to be heard.

2 I'm going to leave -- I'm going to carve out --  
3 how do I want to say this? I think that should be the  
4 schedule with respect to the Trustee's contemplated summary  
5 judgment motion. It could be if the case goes on beyond  
6 that there might be case dispositive motions on other  
7 claims and so that's why I'm trying to provide more time.

8 MR. SHECTMAN: This is Zev Sheckman again.

9 THE COURT: I think we should go back to what I  
10 originally said, which was August 11th and September 29th,  
11 on the claim for declaratory relief and any case  
12 dispositive motions on other claims would have a different  
13 schedule and that would be -- that'd have to be filed by  
14 October 27th and heard by December 15th. Does that make  
15 sense?

16 MR. SHECTMAN: Let me just recap what the Court  
17 is saying. The Court is saying that with respect to the  
18 Trustee is one point for relief, August 11th would be the  
19 date to -- the deadline to file any case dispositive  
20 motions; September 29th would be the hearing date. Is that  
21 correct so far?

22 THE COURT: Well, on this -- on this issue that  
23 you've described, it's partial summary judgment. I know  
24 what the right words are. But you said that -- you know --

25 MR. SHECTMAN: And so --

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1 THE COURT: If that doesn't go your way there  
2 might be discovery issues.

3 MR. SHECTMAN: And --

4 THE COURT: And other -- other elements of the  
5 claim that need to be adjudicated, right?

6 MR. SHECTMAN: Well, so I was thinking that the  
7 hearing on the motion for summary judgment would be a  
8 little bit earlier, perhaps -- perhaps. But if that's what  
9 the Court wants to do, then that's what we'll do. We could  
10 be ready to go earlier than that and -- because we're  
11 planning to file the motion for summary judgment. At this  
12 point we're going to file it May 4.

13 THE COURT: Okay. All right. I'm going to keep  
14 it simple. We'll set the -- we'll set the discovery cutoff  
15 for now at September 30, again subject to hearing  
16 objection. Discovery cutoff will be September 30.  
17 September -- I'm sorry, August 11th will be the deadline to  
18 file a case dispositive motion and September 29th will be  
19 the deadline for such motions to be heard.

20 I expect your motion for summary judgment will be  
21 heard earlier than that, but we'll just leave those dates.  
22 But I will give you the extra room on the discovery  
23 deadline. All right.

24 MR. SHECTMAN: Okay. And we're not doing  
25 additional --

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1 THE COURT: Part of this thing --

2 MR. SHECTMAN: Excuse me.

3 THE COURT: We're not having two sets of dates.

4 One set of dates.

5 MR. SHECTMAN: Got it. Understood.

6 THE COURT: We can all -- if there's some -- and  
7 maybe I'm just worrying too much about hypotheticals. If  
8 there is some reason to alter the schedule under Rule 16,  
9 we'll deal with it then. You know, later on after the  
10 summary judgment motion. Sorry I'm making things more  
11 complicated.

12 All right. Mr. Martinez, any -- having clarified  
13 what the Court's tentative ruling is, any issues with that?

14 MR. MARTINEZ: I have no problem with that, Your  
15 Honor. It's --

16 THE COURT: All right.

17 MR. MARTINEZ: -- (indiscernible).

18 THE COURT: Okay. Ms. Goetz on behalf of  
19 Chamberlin.

20 MS. GOETZ: I don't have an issue with that, Your  
21 Honor.

22 THE COURT: Okay. All right. Mr. Holman.

23 MR. HOLMAN: Yes.

24 THE COURT: I know you raised the issue of the  
25 data room but I think, you know, just to simplify matters



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1 it sounds like because I do think that, you know, the  
2 relevant agreements between the debtor or as towards the  
3 debtor as successor, whatever, on the debtor's side and  
4 your client's side, those to me are basic documents that  
5 under Rule 26 need to be exchanged.

6 And so assuming that the Trustee provides those  
7 to you, pursuant to Rule 26 do you still think you need an  
8 online discovery repository and what do you -- what's your  
9 view of the proposed calendar deadline?

10 MR. HOLMAN: Yes, Your Honor. Thank you. This  
11 is Brian Holman. The data room came up because in our  
12 meet-and-confer it was suggested by counsel to the Trustee  
13 that's what they would do and establish some kind of data  
14 room so that he could have access to all the documents that  
15 are relevant. Those documents would be provided pursuant  
16 to Rule 26 that otherwise, well, then becomes unnecessary.  
17 It's a bit premature to (indiscernible) --

18 THE COURT: That doesn't -- that's doesn't  
19 preclude them from producing them by uploading them to a  
20 website so you can download them, but I -- you know, I'm  
21 most concerned about the parties that have appeared and I  
22 think they need to get those to you so that's what's going  
23 to happen. I'm sorry. Go ahead. I interrupted you.

24 MR. HOLMAN: Well, I was going to say that later  
25 today will be concerning our motion to sever to the extent

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1 that there's not a severance and all of these contracts are  
2 going to be decided. And when proceeding then we would  
3 also require access to the contracts involving everyone  
4 else.

5 THE COURT: Okay. All right. We'll come back to  
6 that, but I -- I would note your issue. Thank you.

7 All right. Ms. Grant, I believe that the Janet  
8 Ganong Estate Living Trust is named as a defendant and does  
9 not have any counterclaims or cross-claims, is that right?

10 MS. GRANT: That's correct.

11 THE COURT: Okay. What's the Trustee's view of  
12 the litigation calendar that -- as described?

13 MS. GRANT: We have no objection.

14 THE COURT: Okay. Okay. Okay. Is Allen Condren  
15 (phonetic) on? I don't believe that someone has made an  
16 appearance on behalf of Stephen Fisher as trustee for the  
17 Nancy Ashton Revocable Trust, Elizabeth Esser (phonetic)  
18 and the Roman Catholic Archbishop of Los Angeles. Somebody  
19 on for those parties?

20 (No response.)

21 Mr. Sheckman, is there any reason that you know  
22 of why they're not here?

23 MR. SHECTMAN: I'm not aware of any reason why  
24 they're not here.

25 THE COURT: Okay. It's not like they threw in

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1 the towel and sent it to release.

2 MR. SHECTMAN: Not to my specific knowledge, no.

3 THE COURT: Okay. You know, I neglected to ask

4 you about mediation and what the Trustee's view is. I

5 think that in the joint status report the Trustee, you

6 know, checked the box expressing openness to mediation.

7 And many of the folks on the phone in their joint -- their

8 part of the joint status report also did. Is that

9 something that the Trustee is asking me to do anything

10 about today or is that something you're just sort of going

11 to manage just before with the dual tracks with your MSJ?

12 MR. SHECTMAN: Right. I think -- I'm not

13 prepared to propose something specific at this moment. I

14 can say that there's an interest and some of the parties

15 are more interested than others. But I think across the

16 board there's a consensus that this -- that the issues in

17 this case, both this adversary proceeding and the overall

18 case, would be -- you know, should be -- should be resolved

19 through some kind of consensual resolution.

20 THE COURT: Okay.

21 MR. SHECTMAN: But I think we'd like to --

22 THE COURT: All right.

23 MR. SHECTMAN: -- defer it later on that.

24 THE COURT: Yeah, that's fine. I just wanted to

25 clarify. You're real -- you're not asking me to do

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1 anything today about mediation and I guess I'd say another  
2 part of my tentative is I don't think today -- I don't  
3 think it's a good idea to order anybody to go to mediation  
4 at this stage of the process. I think there needs to be an  
5 exchange of the basic documents. Maybe after people have  
6 seen the summary judgment motion and the opposition to it  
7 might be a more productive time to deal with that, but I --  
8 and I'm hoping to -- that other people have a different  
9 point of view, but I'm not inclined to order anybody to do  
10 that today.

11 MR. SHECTMAN: I would just add that --

12 THE COURT: All right. Yeah.

13 MR. SHECTMAN: Your Honor, I would just add that,  
14 you know, the Trustee is -- is open to mediation. He  
15 thinks that mediation could be successful and we wouldn't  
16 have any -- any objection to an order if that's why the  
17 Court did have it.

18 THE COURT: Okay. All right. All right. Well,  
19 again, I'm not -- I'm not inclined to -- I'm not inclined  
20 to do that today. I think more -- some more things have to  
21 happen to make that though as well (phonetic) exercised.

22 Okay. Then we have Mr. Langberg or his partner  
23 on be -- Mr. Roth-Moore on behalf of Lance Brown as  
24 trustee. I'm going to refer to these folks as shorthand.  
25 Lance Brown as trustee; Jerome Verboort Dwight, Lela

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1 Minturn Dwight, Jonathan Dwight, John Feliciano as trustee,  
2 Louise Feliciano as trustee, Adam Firestone, Katherine  
3 Hanberg, William Hanberg and Alice Sedgwick, deceased,  
4 Estate of Alice Sedgwick through its personal  
5 representative, Trustee Susanne Sedgwick, Alice Sedgwick  
6 Wohl. I think those are all your clients and you're  
7 welcome to distinguish between them if they have a  
8 different position, but how they would be proposed  
9 litigation calendar?

10 MR. ROTH-MOORE: We have no objection. This  
11 Andrew Roth-Moore for that group. We have no objection.

12 THE COURT: Okay. Very good. Okay. And then  
13 Jane Adams and John Adams as trustee. That's  
14 Mr. Dellefave.

15 MR. DELLEFAVE: Yes, Your Honor. We don't have  
16 any specific objection to the calendaring post. I would  
17 just add that we are also very much in favor of mediation.

18 THE COURT: Okay. Well, I'm sure Mr. Shectman is  
19 going to write that down and seek you out and try to do  
20 that sooner rather than later when the two sides think it's  
21 appropriate.

22 All right. Corian Cross Holdings represented by  
23 Mr. Fisher.

24 MR. FISHER: Yes, Your Honor. Donald Fisher. I  
25 am. And your schedule sounded very reasonable to me. No

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1 objection.

2 THE COURT: Thank you, sir.

3 All right. All right. Let's see. Mr. Renwick,  
4 you represent folks that are in, if I'm not mistaken, two  
5 different categories.

6 MR. RENWICK: I --

7 THE COURT: You've got the Goodwin "A" Mineral  
8 holders who do have cross-claims.

9 MR. RENWICK: Yes, and --

10 THE COURT: (Indiscernible) --

11 MR. RENWICK: And --

12 THE COURT: (Inaudible) --

13 MR. RENWICK: As does Waldo (indiscernible). I  
14 represent the four groups, two of them in redo (phonetic),  
15 two of them in the Santa Maria area. Those in the Santa  
16 Maria area have cross-claims. Those in redo do not. Well,  
17 we filed -- that -- we have a counterclaim which is just  
18 the reverse. We're asking for a -- just because I  
19 sometimes do this -- we're asking -- we're not  
20 (indiscernible) the Trustee's motion for summary judgment  
21 but we're asking for a summary judgment on the same issue.

22 THE COURT: Okay.

23 MR. RENWICK: And so -- but -- and we had done  
24 that in -- for the two parties, the two groups of parties  
25 that we have in redo. We have not done that and -- we have

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1 not done that and we -- well, we've gone further in the --  
2 in the two cases that -- or the two parties that are  
3 represented in the Santa Maria area. There we have alleged  
4 that our leases have terminated for various reasons. One,  
5 because we were underway and stopped over by the -- we had  
6 given notice of termination for breach of contract and we  
7 had only -- we were stopped by the automatic stay and then  
8 we have also alleged that this was terminated for failure  
9 to produce in paying quantities prior to the filing of the  
10 petition in bankruptcy. That's in the Santa Maria area.

11 THE COURT: Okay.

12 MR. RENWICK: So we're in both categories.

13 THE COURT: Okay.

14 MR. RENWICK: We'll talk now or later, whatever  
15 (indiscernible).

16 THE COURT: And with respect -- so your -- your  
17 clients either have counterclaims or cross-claims, right?

18 MR. RENWICK: Yes. Right.

19 THE COURT: Okay. That's a fair statement. All  
20 right. So I -- I would not have gotten yet a joint status  
21 report with respect to your clients, right?

22 MR. RENWICK: No, the only joint status report  
23 that you have is the one that was filed for the Goodwin  
24 "A" -- would you -- Goodwin "A" Group. That was -- that  
25 was filed.

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1 THE COURT: Oh, okay. That one is. All right.  
2 So is there any reason -- I'll ask you first and then I'll  
3 go back to Mr. Israel. Is there any reason to -- with  
4 respect to the Goodwin "A" defendants adopt a different set  
5 of dates and deadlines?

6 MR. RENWICK: I don't think so but, you know, I  
7 have to confess I must not be as smart as all these other  
8 people because I have a scribbled piece of paper here with  
9 a lot of cross-offs. And would you please tell me again  
10 what the dis -- well, I know that the MSJ --

11 THE COURT: Yes, right.

12 MR. RENWICK: -- will be filed on May 4th. What  
13 is the discovery cutoff? Give me the time and date that is  
14 settled on because --

15 THE COURT: Fair enough. Fair enough. And  
16 that's the Judge's fault entirely because I was all over  
17 the place since I was thinking out loud, so my apologies.  
18 The discovery cutoff would be September 30th.

19 MR. RENWICK: Okay.

20 THE COURT: Deadline to file case dispositive  
21 motions would be August 11th and the deadline for any such  
22 motions to be heard would be September 29th. Now, I'm not  
23 setting it as --

24 MR. RENWICK: Okay.

25 THE COURT: -- deadline, but the Trustee has



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1 indicated that he plans to file his motion because he has  
2 to under his financing agreement. He's got to get that on  
3 file in May --

4 MR. RENWICK: Okay.

5 THE COURT: -- and the earliest that it could be  
6 heard would be 42 days after that. Because you're  
7 contemplating a cross-motion, you know, I don't think our  
8 Local Rules really talk about cross-motion. I'd really  
9 like it if the two sides were -- can confer on that. Maybe  
10 you have and so we have kind of an organized process.

11 Would it be your -- would it be your notion,  
12 Mr. Renwick, that you would file your summary judgment  
13 motion at the same time that the Trustee filed his?

14 MR. RENWICK: No. I would probably do general  
15 cross-motions for summary judgment. We could -- I would  
16 only seek a cross-motion -- I have a cross-motion for  
17 summary judgment only on the 365 issue. I wouldn't be  
18 trying to bring a summary judgment on the termination  
19 issues.

20 THE COURT: No, I understand. So why wouldn't  
21 you file your --

22 MR. RENWICK: So I would --

23 THE COURT: -- cross-motion? Why wouldn't you  
24 file your cross-motion --

25 MR. RENWICK: Well, because --

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1 THE COURT: -- on that issue the same time he  
2 files his?

3 MR. RENWICK: Because I'd like to see what they  
4 say first. I mean, typically a cross-motion comes in  
5 later.

6 THE COURT: Yeah.

7 MR. RENWICK: You tell -- you --

8 THE COURT: I don't --

9 MR. RENWICK: -- won't (indiscernible) -- I will  
10 do it at certain times if you wanted a particular time.

11 THE COURT: Yeah. I don't think our Local Rules  
12 address that.

13 Mr. Israel, do you want to say anything about  
14 this issue of cross-motion and how the timing should work?  
15 Do you have any problem with what Mr. Renwick proposes is  
16 if he decides to file his own motion for summary judgment?  
17 You'd -- certainly under the litigation counsel we're  
18 discussing he'd be able to do that at any time of his  
19 choosing. It might create a kerfuffle if his can't be  
20 heard at the same time yours is scheduled to be heard. So  
21 that's why I sort of talk about coordinating. Have you  
22 given any thought for this?

23 MR. ISRAEL: Well, Your Honor, this is Eric  
24 Israel. That (indiscernible) responding, but I -- I --

25 THE COURT: Okay.

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1 MR. ISRAEL: -- would say that we should file our  
2 motion. We currently have a deadline under the -- it's one  
3 of the milestones and, you know, subject to, you know,  
4 scheduling them 42 days' notice or one of your stacking  
5 dates, we will -- you know, the present intention is to try  
6 to use the date, which I think is June 15th if we're able  
7 to get the motion on file and count back 42 days. But if  
8 Mr. Renwick files a cross-motion -- I'm not sure he needs  
9 one. It's just to deny -- you know, to rule the other way  
10 on the declaratory relief action but --

11 MR. RENWICK: Maybe I don't.

12 MR. ISRAEL: Yeah, but that's what he does he  
13 can -- he can file it and we'll arrange, you know, the  
14 schedule and some way that makes sense, you know, for  
15 everybody.

16 THE COURT: Okay.

17 MR. JONES: Your Honor, this is Evan Jones on  
18 behalf of UBS. If I might be heard on this --

19 THE COURT: Yes.

20 MR. JONES: -- since we've now been granted  
21 intervention. We didn't participate in these status  
22 discussions as we weren't yet (indiscernible) parties but  
23 not surprisingly it is important to UBS that this be  
24 resolved as soon as possible. And Mr. de Leest and  
25 Mr. Sheckman -- I'm sorry, Mr. Israel and Mr. Sheckman have

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1 mentioned the milestone date in the credit agreement.  
2 Understanding that those milestones have had to be changed  
3 before we hoped not to have to change that one and so we  
4 would like to see the Trustee file his motion on May 4th.

5           It would seem to me that if Mr. Renwick wants to  
6 file his own cross-motion knowing that, he should plan to  
7 do it on May 4th also or they -- they may well be on a  
8 different schedule and we would not want to see the  
9 Trustee's motion delayed for determination because a cross-  
10 motion has had filled. So, you know, Mr. Renwick can file  
11 his motion whenever he chooses to, but we would certainly  
12 suggest to the Court if that happens that it not delay  
13 ruling on the Trustee's motion because we do want to get  
14 this resolved.

15           THE COURT: Right. So Mr. Renwick, here's --  
16 Mr. Renwick, here's the dilemma. Okay. We know that the  
17 Trustee's motion on this -- they view it as a pure legal  
18 issue but whatever everyone characterizes it, okay, on the  
19 365 issue, if it's -- you know, typically our Local Rules  
20 require that a motion for summary judgment be heard not  
21 less than 42 days after its filed. All right. Now, I  
22 understand your desire to see their motion. Of course,  
23 you're going to get an opportunity to oppose it, but you  
24 want to file your own summary judgment motion, okay, and  
25 you're asking or suggesting that you might do that after

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1 they file theirs.

2           What Mr. Jones is raising is the problem that  
3 then arises which is we had a summary judgment motion.  
4 It's calendared. We have your cross-motion of which then  
5 under our Local Rules, absent a further order of the Court,  
6 can't be heard on less than 42 days' notice. He's trying  
7 to deal with the likelihood that you're going to come to  
8 this court and ask me not to rule on the Trustee's motion  
9 at the date that's set for that hearing and instead,  
10 continue it to the date that you set your cross-motion.  
11 This always happens with these cross-motion situations  
12 and --

13           MR. RENWICK: Well --

14           THE COURT: -- the Trustee is functioning under a  
15 set of milestones that they agreed to as a condition of for  
16 getting the relief and seeings as how, you know, it's  
17 April 17th and we're having this discussion now, I would  
18 like to figure out how we're going to resolve this and not  
19 be in a position where you're asking me to put off a  
20 hearing on the Trustee's half of the equation because  
21 yours -- because you chose to file yours later than the  
22 Trustee filed his.

23           MR. RENWICK: I will coordinate with Mr. Israel  
24 and I guarantee you it will be done in such a way that  
25 there will be no need to do what you and Mr. Jones are

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1 concerned about.

2 THE COURT: Okay. Sounds good. So you're okay  
3 with the -- with -- at least with the -- with the  
4 litigation deadlines that we've gone through?

5 MR. RENWICK: Yes, I am.

6 THE COURT: Okay. And on behalf --

7 MR. RENWICK: Let --

8 THE COURT: On behalf of --

9 MR. RENWICK: -- (indiscernible).

10 THE COURT: -- (indiscernible).

11 MR. RENWICK: Yes.

12 THE COURT: Yes.

13 MR. RENWICK: It's fine for all my clients.

14 However, I -- at some point in time, and maybe that's the  
15 present time, I'd like to say a little something about  
16 settlement because settlement -- as far as I'm concerned  
17 settlement is already under -- settlement discussions are  
18 already underway to -- I've had several conversations with  
19 Mr. Israel and two -- two days ago, I think, I submitted to  
20 him a fairly -- well, it's a generalized, more detailed  
21 outline than before, but what I think a global settlement  
22 would look like in this case.

23 There's not much money rolling around in anyone's  
24 pocket in this case and we ought to be spending our time I  
25 think trying to get it resolved, rather than having a lot

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1 of fun fighting with one another.

2 THE COURT: Right. Now, I certainly understand  
3 that perspective. I mean, you know, just without prejudice  
4 to people's rights I understand there are some folks here  
5 that are owed a lot of money, but I certainly -- and I  
6 understand that the -- they're entitled to press their  
7 rights. I understand why the Trustee would be pushing to  
8 try to get the relief that he is asking for so that the  
9 thing can be sold and perhaps these leases might go back  
10 someday back into production and put money in people's  
11 pockets.

12 MR. RENWICK: Well, that's what my clients --

13 THE COURT: And (indiscernible) --

14 MR. RENWICK: -- want. That's what my clients  
15 want --

16 THE COURT: Yeah.

17 MR. RENWICK: -- and that's exactly what my -- is  
18 what the settlement that we have proposed or the outline of  
19 the settlement that we have proposed would accomplish we  
20 think.

21 THE COURT: Okay. Well, I'm glad to hear it.  
22 I'm not going to ask anybody to reveal the -- their  
23 confidential settlement negotiations, but I'm glad to hear  
24 that you're working on it and hopefully some of this  
25 litigation stuff that we're planning will become

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1 unnecessary, so --

2 MR. RENWICK: That's what we're hoping.

3 THE COURT: -- thank you for sharing that.

4 MR. RENWICK: That's what we're hope -- yeah,  
5 that's what we're hoping for.

6 THE COURT: All right. Very good. Okay.

7 Ms. Rhim and your clients, anything you want to  
8 say about the schedule?

9 MS. RHIM: No, Your Honor. I think it's -- it  
10 sounds fine. Thank you.

11 THE COURT: Okay. Is there any defendant  
12 who's -- has a representative here today who I've not  
13 called on to respond to the proposed litigation schedule?

14 (No response.)

15 All right. Then, Mr. Shectman, I think we have  
16 vehement (phonetic) -- it's not vehement in agreement;  
17 vehement on objection to the dates that I reiterated a  
18 moment ago and I'd ask you to lodge the scheduling order.

19 MR. SHECTMAN: Will do, Your Honor. There's a  
20 couple other housekeeping items, one or two.

21 THE COURT: Okay. Well, we're still in -- under  
22 the umbrella of status conference. Go right ahead.

23 MR. SHECTMAN: Yes. Thank you very much. I  
24 wanted to mention the fact that there's -- we're also  
25 working on defaults and we've been filing requests for



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1 enter of default in this action --

2 THE COURT: Right.

3 MR. SHECTMAN: -- or I'm sorry, file default  
4 judgment motion. And I mean, probably it could be heard at  
5 the same time as the MSJ, but I also wanted to note that as  
6 the Court may already be aware from reviewing the status  
7 report is that we have some issues with service of some of  
8 the defendants.

9 THE COURT: Yes. I believe I read that 99 of  
10 them came back in the mail.

11 MR. SHECTMAN: Yes, Your Honor. And we also were  
12 told that some of the people we named as defendants have  
13 passed away.

14 THE COURT: Yeah.

15 MR. SHECTMAN: And, you know, issues of that  
16 nature which are important and we want to make sure we  
17 address them to the best that we can. And I -- I think the  
18 way to deal with it is something that was contemplated when  
19 we filed the complaint, which is that there -- there could  
20 be Doe defendants or amendments to address the fact that we  
21 have -- that these situations which for on an ongoing basis  
22 we've heard from people that -- that, you know, one way or  
23 another something needs to be corrected for naming  
24 purposes, whether it's meeting with the estate  
25 representative or, you know, the address that we have is,

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1 you know, 20 years old or whatever it is.

2 So we just wanted to make sure I brought up this  
3 issue in terms of how we're going to address that kind of  
4 procedural matter, whether that's an amended motion, other  
5 amended complaint or rather something more like the Doe --  
6 naming the Doe defendant process that is in -- you know,  
7 more common in state court.

8 THE COURT: Okay. Well, I don't -- I don't want  
9 to inadvertently make any sort of advisory opinion but  
10 just, you know, for the sake of discussion reacting to what  
11 you said. We are governed by the Federal Rules of Civil  
12 Procedure and so I think the answers to most questions are  
13 there and in the federal case law that construes them.

14 I will be the first to admit that I am not an  
15 expert on state procedure. So when you refer to have those  
16 that are named in the state court, I'm not about to endorse  
17 that even -- even unofficially.

18 My, you know, sort of -- you know, sort of over-  
19 arching view -- and this is, of course, to be subject to  
20 being educated by briefs and case authority -- is that the  
21 fundamental issue is one of -- you know, when you're  
22 talking about service is due process, that there is federal  
23 law that allows you to deal with the inability in some  
24 degree to locate defendants when you seek relief against  
25 them.

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1 I think generally you have to know who the  
2 defendants are or at least who they take from and sort of  
3 naming a Doe -- saying Doe in a complaint might preserve  
4 your ability later to amend the complaint when you get  
5 better information. I'm not sure that naming someone as a  
6 Doe -- well, not naming them is really what you're doing.  
7 You know, Doe Number 1, you know, that gives notice to  
8 nobody as to who you have in mind.

9 So I would just as a general matter say focus on,  
10 you know, the Federal Rules, focus on the case law that  
11 deals with service of process of parties that are difficult  
12 to locate and, you know, the appropriate (indiscernible),  
13 entertain whatever motion you had to make. But I'm very  
14 unlikely to adopt the procedure from, you know, sort of  
15 California practice on an issue that's governed by federal  
16 law.

17 MR. SHECTMAN: Thank you.

18 THE COURT: Anymore you were looking -- looking  
19 from me for -- looking for from me?

20 MR. SHECTMAN: I wanted to preview the issue I  
21 think that we also sort of previewed in the joint status  
22 report and just wanted to get a feel for how you're  
23 thinking of it. I think that's helpful, Your Honor. Thank  
24 you very much.

25 The other thing, one final note I think following

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1 up on some of the positive comments regarding settlement  
2 discussions I would just suggest that we leave it open for  
3 discussion on -- in May and perhaps sooner than that if  
4 there's an appropriate timeline made with respect to  
5 ordering the parties to mediation and that, you know, we  
6 all keep an open mind about that process and definitely  
7 talk about it again after next status conference.

8 THE COURT: Okay. All right. Let us -- before  
9 we -- while we're still on this adversary proceeding let's  
10 talk about the motion to sever. And let me -- let me  
11 really start with Mr. Renwick and ask what -- kind of what  
12 your -- what you're trying to achieve by severing your --  
13 the matters involving your clients from the rest of the  
14 adversary.

15 MR. RENWICK: Think that goes to Mr. Holman.

16 THE COURT: As a (indiscernible) --

17 MR. RENWICK: Mr. Holman.

18 THE COURT: Mr. Holman, I'm sorry.

19 MR. RENWICK: You mean, Mr. Holman.

20 THE COURT: I do mean Mr. Holman. I apologize.

21 MR. HOLMAN: Your Honor, we simply don't want to  
22 be involved in the litigation concerning the  
23 characterization of how many other oil and gas leases may  
24 be the subject of this litigation. I don't know how many  
25 those are but if there's, you know, 10 or 20 or 30 or 40

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1 there's going to be one court ruling that encompasses  
2 characterization of all of those agreements based on the  
3 terms of the agreements, I think we would be required to  
4 examine them, review them, argue about why they're the same  
5 or why there's a different (indiscernible) agreements and  
6 that's a lot of burden.

7 THE COURT: I see. I would -- you know, look --  
8 kind of when I looked at the Trustee's complaint I have to  
9 admit that didn't come to mind. I mean, I -- I sort of  
10 looked at the complaint and assumed that although they're  
11 part of a single complaint and it's done in a -- it's not  
12 as economical way as you could, you know, with a single  
13 complaint and so, you know, generally speaking the pleading  
14 without getting into the details of each agreement in the  
15 complaint itself, I still look at that complaint in my  
16 reaction as -- well, they're really asking for -- they're  
17 really suing each counter-party to each of the agreements  
18 with respect to the agreements of those counter-parties and  
19 nothing else. I mean, I don't look at it -- and I  
20 understand your point, though, that technically one could  
21 say, you know, you're being -- you're being sued for a  
22 declaration regarding everybody else's agreement.

23 But I don't think that's what the complaint does  
24 and I guess, you know, if a motion to sever clarifies that  
25 maybe, you know, depending on -- I've got to hear from the

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1 Trustee. Maybe that's the simple answer to give you the  
2 comfort you're looking for on that issue. That doesn't  
3 mean that even if I were to sever it that I wouldn't keep  
4 the matters administratively consolidated because I do  
5 think there are economies that have scale to be considered.

6 You want to respond to that before I ask the  
7 Trustee to respond?

8 MR. HOLMAN: I think you've identified the issue  
9 and our concerns.

10 THE COURT: Okay. All right. Who's going to  
11 respond on behalf of Trustee? Mr. Shectman, I can't hear  
12 you. I see your mouth moving.

13 MR. SHECTMAN: Got it.

14 THE COURT: Okay.

15 MR. SHECTMAN: Can you hear me now? Okay.

16 THE COURT: Yes.

17 MR. SHECTMAN: Okay. Thank you, Your Honor. So  
18 we're -- we filed one claim for relief against hundreds of  
19 parties and it's one legal issue we believe that impacts  
20 hundreds of parties. We think it would be a big mistake to  
21 start lopping off individual parties. The whole bankruptcy  
22 process as in a case with hundreds of parties is designed  
23 to avoid piecemeal litigation and this would be the  
24 definition of piecemeal litigation.

25 We think the Court has broad discretion on an

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1 issue such as this and for all the reasons we set in our  
2 opposition we believe that it just makes sense from the  
3 perspective of the standards that courts look at to keep  
4 everybody together. And, in fact, it would be -- it would  
5 be problematic from a due process perspective to start  
6 separating them out and if -- that as a practical matter if  
7 the Court says the Court ended up, you know, keeping  
8 everybody's schedule anyway, what would really be the  
9 point? So we think that --

10 THE COURT: Well, but I think -- you don't -- you  
11 think your complaint is so clear and unambiguous that it is  
12 clear that Mr. Holman isn't -- isn't being asked to respond  
13 to the issues of the other whatever it is, 500 leases. I  
14 don't know that it's that clear.

15 MR. SHECTMAN: I believe it is.

16 THE COURT: And so, you know, maybe there's  
17 something -- some clarification in the complaint that -- I  
18 agree with you that having separate hearings and treating  
19 it completely separately might be cumbersome. I think that  
20 Mr. Holman, if he's got an argument, that the Court cannot  
21 give a legal ruling in a vacuum. Well, he's going to make  
22 that argument and I'm going to figure that out.

23 Actually, if he's still part of the same lawsuit  
24 there's a chance that that could have an affect on your --  
25 on the release you're seeking with respect to other

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1 parties. I haven't really thought that through. I mean,  
2 I'm not sure why you wouldn't agree to sever or somehow to  
3 clarify your complaint to address his concern, which is  
4 that he doesn't want to be responsible for litigating  
5 issues with respect to other contracts, which he might have  
6 to do just to protect his own position.

7 MR. SHECTMAN: Your Honor, I think those are not  
8 invalid thoughts. They're legitimate considerations and  
9 they're legitimate for all 420 named defendants. And if  
10 somebody has the wherewithal and the desire to respond to  
11 the complaint with facts that make their position special  
12 for one reason or another or important for one reason or  
13 another, they need to do it in this adversary proceeding.  
14 And if somebody else thinks that those facts are relevant  
15 to them, they will say so and if someone doesn't they don't  
16 need to say so.

17 But if we start separating these out into 400  
18 difference pieces of litigation we have a due process  
19 problem because there's stuff that may affect one per --  
20 one defendant that's gone on in a separate adversary  
21 proceeding, whereas if we keep it altogether we don't have  
22 that issue and we don't have really big judicial and estate  
23 economy issues. So I don't think we want to go down this  
24 path and there really isn't a good basis laid out in the  
25 motion to do it.



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1 THE COURT: Okay. Anyone else want to be heard?

2 MR. JONES: Your Honor, Evan Jones on behalf of  
3 UBS. We agree with the Trustee. I'm frequently reminded  
4 the Federal Rules of Civil Procedure, as well as the  
5 Federal Rules of Bankruptcy Procedure, Rule 1, they are to  
6 be construed to obtain a just, speedy and inexpensive  
7 resolution of matters.

8 If we were to sever these into 400 separate  
9 actions it --

10 THE COURT: Okay. I'm going to --

11 MR. JONES: -- simply takes up more time.

12 THE COURT: Nobody is asking for that. I have  
13 one motion to sever from one group of defendants with a  
14 very particular argument which is --

15 MR. JONES: Well, but --

16 THE COURT: -- they don't -- they don't want to  
17 have to answer for everybody else's agreement. It seems to  
18 me that severance might be the answer or there might be a  
19 more elegant solution. I just don't feel like the -- I  
20 don't think -- I get that that's not what the Trustee --  
21 not a burden the Trustee intended to put on this defendant,  
22 but I'm also not convinced that the complaint is so  
23 unambiguous. It really seems to me that the parties need  
24 to meet-and-confer further.

25 I'm going to continue this to our May date and if

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1 you haven't resolved it by then, I'll rule.

2 MR. JONES: Thank you, Your Honor.

3 THE COURT: Okay? I just -- it just seems like  
4 a -- kind of a silly thing that could be resolved, but  
5 maybe I'm wrong and I'll be prepared if you haven't  
6 resolved it consensually to give you a ruling then.

7 All right. Hold on. I'm going to look at my  
8 notebook here. Where did I put it? Hold on a second.

9 (Pause)

10 Okay. Let's talk about #3.00 and #4.00. I'm not  
11 sure why they were calendared separately. I think the  
12 clerk's office probably just when the counterclaim came in,  
13 you know, kind of treated it as a separate matter. I think  
14 going forward there should only be one -- I think there  
15 should only be one status conference.

16 MR. SHECHTMAN: Your Honor --

17 THE COURT: Yes. Who's speaking.

18 MR. SHECHTMAN: -- so if I'm reading the calendar  
19 correctly, #3.00 and #4.00 are different adversary  
20 proceeding. They're the Trustee's s adversary proceeding  
21 against GLR and GRL which is a different adversary number?

22 THE COURT: Yeah. I'm not sure why they were  
23 assigned different numbers either. Maybe that's standard  
24 practice, but I'd --

25 MR. SHECHTMAN: Well, it's a different complaint.

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1 THE COURT: -- have to look into that. Well,  
2 it's a counterclaim, though, is it?

3 MR. SHECHTMAN: No. I mean, there is a  
4 counterclaim but it's a separate -- the Trustee filed a  
5 separate complaint against just GRL, LLC and GLR, LLC and  
6 then GRL and GLR filed a counterclaim.

7 THE COURT: Right. Ordinarily --

8 MR. SHECHTMAN: Okay.

9 THE COURT: -- those aren't treated as separate  
10 adversaries with separate status conferences.

11 MR. SHECHTMAN: Got it. Understood.

12 THE COURT: Okay. So that's all I'm getting at.

13 MR. SHECHTMAN: Okay.

14 THE COURT: Okay. All right.

15 MR. HOLMAN: Your Honor --

16 THE COURT: So -- yes. Who's speaking?

17 MR. HOLMAN: Your Honor, this is Brian Holman  
18 appearing for Bradley Land Company. I'm confused. We have  
19 our counterclaim which essentially in our view is an  
20 extension of resolution of the issues raised by the  
21 Trustee's complaint. Are you saying we don't need to file  
22 a notice of hearing status report for BAP to answer in that  
23 period? It wouldn't possibly be anything different than  
24 what we've said already, which is we expect everything to  
25 be resolved at summary judgment.

1 THE COURT: Yeah, I don't think so.

2 Mr. Shectman, is that -- is there any reason for  
3 that to be governed by a different set of dates and  
4 deadlines or is there a need for an additional status  
5 report?

6 MR. SHECHTMAN: So the people who filed  
7 counterclaims are all here, the attorneys. The only  
8 thing -- the only caveat that I would put there is that  
9 there were -- there were two or three -- there were three  
10 answers filed very recently, like this week, maybe on  
11 Monday of this week by Mr. Renwick. And I think they all  
12 include counterclaims, so they weren't parties to be joint  
13 status reports so I don't want to speak for him.

14 THE COURT: Well, okay. All right. Well, I --  
15 we'll go back to Mr. Renwick in a second, but I think -- I  
16 think he was fine with the schedule governing his --  
17 Mr. Holman I think asked me for clarification on his.

18 MR. SHECHTMAN: Well, I would say that we should  
19 use these dates and deadlines for all the parties,  
20 including Mr. Renwick.

21 THE COURT: All right. In which case -- in which  
22 case we don't need a joint status report -- any more joint  
23 status reports.

24 MR. RENWICK: And this is Edward Renwick. We do  
25 to need them. There are nothing -- nothing has -- in those

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1 three recently filed complaints. There are -- answers and  
2 counter-claims. There is nothing that isn't already  
3 included in the first one that I filed, so there -- they  
4 track the same issues and should be governed by --

5 THE COURT: Right. Okay.

6 MR. RENWICK: -- the same procedures.

7 THE COURT: Got it. That was my working  
8 assumption, but I think Mr. Holman --

9 MR. JONES: Your Honor --

10 THE COURT: -- (indiscernible) do -- whether he  
11 needs to do something separate. Yeah, go ahead.

12 MR. JONES: I'm sorry, Your Honor. Evan Jones  
13 for UBS. I just want to make sure. We are a defendant in  
14 a number of the cross-claims. My understanding of the  
15 discovery deadlines that the Court set out before that  
16 those would not apply or would be subject to being  
17 revisited. Were the Court to deny the Trustee's summary  
18 judgment motion because the counterclaims set forth  
19 obviously factual issues, that I don't understand the  
20 Court's earlier deadlines apply to if we need -- if we need  
21 to go there.

22 THE COURT: I stated the Court's intention to  
23 revisit those if need be.

24 MR. JONES: Thank you, Your Honor.

25 THE COURT: Okay. But getting back to

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1 Mr. Holman's question I don't think you need a new joint  
2 status report.

3 MR. SHECHTMAN: This is Zev Sheckman again.

4 THE COURT: Okay.

5 MR. SHECHTMAN: Your Honor --

6 THE COURT: I don't think -- I don't think we  
7 need Mr. Holman's clients and Mister -- actions involving  
8 Mr. Holman's clients, Mr. Renwick's clients. We don't need  
9 another joint status report on that. We're all agreed on  
10 the litigation schedule and all is subject to being  
11 revisited if I need to.

12 MR. SHECHTMAN: Very well.

13 THE COURT: Okay. All right. Just trying to be  
14 practical. I agree, there's no point to more paper on --  
15 you know, taking notice from calendaring and respond to  
16 that.

17 All right. So #3.00 and #4.00 are the complaint  
18 and the counter-complaint, if you will, or counterclaim in  
19 *McConnell v. GLR and GRL*. And who's on as representing GLR  
20 and GRL?

21 MR. BEALL: Your Honor, William Beall, Beall &  
22 Burkhardt, and still here.

23 THE COURT: Very good. I just wanted to make  
24 sure.

25 MR. BEALL: Sure.

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1 And Mr. Shectman, are you handling this also?

2 MR. SHECHTMAN: Yes, Your Honor.

3 THE COURT: Okay. All right. So I see this  
4 litigation as different than the other adversary that  
5 involved declaratory relief and I actually would like to  
6 kind of put it on a different -- a different track. I  
7 would -- this is what I would propose, that we set  
8 August 28th as the discovery cutoff, as well as the  
9 deadline to amend the pleading, add parties or seek leave  
10 to do so if leave is required. September 17th is the  
11 deadline for case dispositive motion and November 5th is  
12 the deadline for any such motions to be heard.

13 I will now hear from the plaintiff and then the  
14 defendant on your reaction to those dates. Oh, and I would  
15 continue this status conference to July 2nd at 10:00 a.m.  
16 and check in with you then.

17 MR. SHECHTMAN: Your Honor, so I've got an  
18 August 28th discovery cutoff. Here normally that would  
19 probably be okay. I would just say that here, kind of like  
20 with every other litigation, we just want to make sure that  
21 that's without prejudice and consideration for the issues  
22 with discovery that we may have including getting witnesses  
23 deposed in this action --

24 THE COURT: Well --

25 MR. SHECHTMAN: -- prior to that date.

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1 THE COURT: If you're concerned that you need  
2 more time, I mean, there's -- that's really not a thing.  
3 You know, there's like once I set a calendar scheduling  
4 order under Rule 16 there's a whole set of case law on what  
5 it takes to get me to amend a Rule 16 scheduling order and  
6 you would be bound by that case law.

7 If you're concerned that it's not going to  
8 happen -- that that's not enough time reasonably to get all  
9 this done, then say so now because once I set it,  
10 revisiting it is subject to the Rule 16 standards for  
11 revisiting the calendar.

12 MR. SHECHTMAN: Thank you for that, Your Honor.  
13 I think we should push it out. I think we should push  
14 it -- I think we should push the dates out at least a  
15 couple months.

16 THE COURT: Okay. And would you then propose to  
17 move -- because usually -- usually the deadline for case  
18 dispositive motions I set comes after discovery is  
19 completed. Would you then have me set the other deadlines  
20 out?

21 MR. SHECHTMAN: So I would propose here that we  
22 move the August date to October by -- 60 days the end of  
23 October and then push the other dates out commensurately.

24 THE COURT: Okay. All right. Mr. Beall.

25 MR. BEALL: I'm fine with Mr. Shechtman's



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1 suggestions, Your Honor. I think that between the pandemic  
2 and then we have some particular issues in this case that  
3 may take a little bit longer on discovery than otherwise  
4 and I think that that's reasonable.

5 The dates that I'm more concerned about is that  
6 July 2nd date. I don't really love that date but I guess I  
7 could appear telephonically if my family goes off somewhere  
8 for the long weekend.

9 THE COURT: Okay. Well, I'm happy to -- I'm  
10 happy to look at my calendar and find a different date. If  
11 you're able to take a vacation I would want you to take it.  
12 You know, Lord only knows whether any of us will be able to  
13 take vacations.

14 MR. SHECHTMAN: Well, we may be having our  
15 vacation by Zoom, Your Honor. It's hard to know.

16 THE COURT: Yeah, yeah. Yeah, yeah. Okay.  
17 Well, I'll actually take a look at that one in a second,  
18 but let me just figure out.

19 So discovery cutoff -- October 30th is a Friday  
20 and I want to make -- I'd say October 31, but I don't want  
21 to be making it on a weekend. So discovery cutoff of  
22 October 30 and then we -- excuse me. Yeah, let's say a  
23 deadline before the Thanksgiving holiday to file any case  
24 dispositive motions of November 20.

25 And then what did I give there? Couple -- a

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1 month and a half. Hasn't heard. We run into the holidays.  
2 All right. All right. So I don't even have -- I don't  
3 have my 2021 calendar. All right. All right. Discovery  
4 cutoff of October 30. The deadline to file any case  
5 dispositive motion of December 4th. And then because  
6 honestly I just don't have my 2021 calendar set yet -- I  
7 need to work on that -- I'm going to leave that open and we  
8 can revisit it at our next status conference. Let me  
9 figure out when that will be that it's not the week -- the  
10 first week of September. How -- or I'm sorry, the first  
11 week of July.

12 Anybody have an issue with having a continued  
13 status conference in this adversary on July 15 at 2:30?

14 MR. BEALL: That should be fine for me, Your  
15 Honor. William Beall.

16 THE COURT: Mr. Sheckman?

17 MR. SHECHTMAN: Checking my calendar. That  
18 should be fine.

19 THE COURT: Okay. Great. Mr. Sheckman, I'll ask  
20 you to prepare the scheduling order, such as it is. That  
21 discovery deadline October 30th also will be the deadline  
22 to amend the pleadings, add additional parties or seek  
23 leave as leave is required. Okay.

24 I'm going to ask the parties before the -- no  
25 later than 14 days before July 15th so no later than July 1

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1 and maybe you should get it then earlier, if -- if Mr.  
2 Beall is going on vacation, a short updated status report.  
3 And by "short updated status report," I mean you don't have  
4 to use the court form because they don't need all that  
5 stuff that I've already read in your initial joint status  
6 report. I just want to know has anything changed, are  
7 there any problems. Okay. And in -- preferably in one  
8 piece of paper that sets forth sort of those status  
9 positions. If there's nothing to report just, you know,  
10 file a short single page that says, hey, we're all just  
11 tootling along and we've got nothing new to report. But at  
12 least I've got something to look at and prepare in advance  
13 of the status conference and know what to expect.

14 MR. SHECHTMAN: Okay.

15 THE COURT: Okay. All right. All right. Thank  
16 you.

17 MR. BEALL: Thank you.

18 THE COURT: Let's see. Thank you, thank you.  
19 Okay. So working backwards, we've done #7.00. Done #6.00  
20 continued. #5.00 is the motion to intervene is granted.  
21 #3.00 and #4.00 we've dealt with and #1.00 we've dealt  
22 with. All right. I need a -- I just need a second to kind  
23 of reorganize my stack of paper. Oh, and we've also done  
24 #2.30 which is the financing.

25 So what that leaves is #2.00, #2.10, and #2.20.

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1 Is there any -- anybody that's on the line for some other  
2 matter other than those three matters that -- you know,  
3 that wants to be heard that didn't think I gave them an  
4 opportunity to be heard? Speak now or forever hold your  
5 peace.

6 (No response.)

7 All right.

8 MR. ISRAEL: Your Honor, this is Eric Israel. On  
9 #2.20 I think we already did that with the Trustee's oral  
10 report, but if Your Honor wanted more we can.

11 THE COURT: Oh, the Chapter 11 status conference.  
12 That's fair. Is there anyone that had anything to say or  
13 wanted to say anything more about the Chapter 11 status  
14 conference?

15 (No response.)

16 Okay. I'm good and no one else has any questions  
17 so I guess that one is done, too. Thank you.

18 Oh, let's see. Expunging is #2.00. I gave it  
19 the wrong number. Okay. I've got that. I've got the  
20 protective order motion. Okay. That's done, that's done.  
21 That's done for today. Okay.

22 All right. Let's -- let's take up the #2.00, the  
23 motion to expunge lien. All right. Just tell me first off  
24 who will argue on behalf of the Trustee on this one and who  
25 is representing the respondent.

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1 MR. ISRAEL: Your Honor, this is Eric Israel. I  
2 will be arguing the assumption motion.

3 THE COURT: Okay.

4 MS. TOMASCO: Your Honor, this is Patty Tomasco.  
5 I'll be arguing on behalf of the claimant.

6 THE COURT: Okay. All right. Mr. Israel, I know  
7 this is a little bit of a shift because with so many other  
8 things I do and I've done today I kind of started off by  
9 telling you what I wanted to do, but I'm really to treat  
10 this as -- these last two items are -- are substantive and  
11 so I'm going to treat this as an oral argument and invite  
12 you -- and partly because we've been going for so many  
13 hours as it will help put me back in the right frame of  
14 mind, ask you to, you know, make a presentation in support  
15 of your motion, walk me through your arguments will get me  
16 back on track. And then I'll hear from Ms. Tomasco in  
17 opposition.

18 MR. ISRAEL: Thank you, Your Honor. I'd be glad  
19 to. Without repeating too much that is in the motion,  
20 Sections 546(d) and 362(b)(3) together very narrow  
21 exceptions the scope of the automatic stay. Section 546(d)  
22 expressly requires that a notice under that statute relates  
23 to a prepetition interest in property for which under state  
24 law an interest such as a lien could have been perfected  
25 absent the intervention of the bankruptcy filing.

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1           The three lien notices that we're challenging  
2 filed by the Breca affiliates (phonetic) all rely on the  
3 California oil and gas --

4           THE COURT: Okay. Stop. Stop, stop, stop, stop,  
5 stop.

6           Somebody had some music on and I'm sure you  
7 didn't mean to interrupt, but if you could mute the  
8 background music that would be great. I just want to make  
9 sure we get a good record.

10           Why don't you pick up before your last sentence,  
11 Mr. Israel? Go ahead.

12           MR. ISRAEL: Okay. Section 546(b) expressly  
13 requires that the notice relate to a prepetition interest  
14 in properties which under state law -- for which under  
15 state law in interest such as a lien could have been  
16 perfected absent the intervention of the bankruptcy filing.

17           The three notices if our -- filed by Breca  
18 affiliates all rely on the California oil and gas lien  
19 statutes under California Code of Civil Procedures.  
20 However, those statutes only allow for a lien to secure  
21 goods and services delivered within 180 days before the  
22 notice was filed. To try to fit themselves within the oil  
23 and gas lien statutes, the notices all state expressly that  
24 they cover the period starting August of 2019. The  
25 petition date for this case was July 25, 2019, so on their

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1 face the notices only cover post-petition periods.

2           However, Section 546(b) does not apply to post-  
3 petition rights. Indeed --

4           THE COURT: Right.

5           MR. ISRAEL: -- the statutes submits that  
6 otherwise the strong bankruptcy policy of avoiding rushes  
7 to the courthouse by multiple creditors would be violated  
8 if Section 546(b) applies to post-petition debts.

9           In any event, after repeated the Trustee's motion  
10 to expunge the notices on that basis the insider creditors  
11 all did a complete about-face arguing that, oops, contrary  
12 to everything that they argued in their own notices they  
13 had some sort of prepetition rights to record a lien. It's  
14 stated in the Trustee's reply that this isn't so.

15           The oil and gas statutes the insiders rely on  
16 require the notices be recorded within 180 days. If they  
17 actually have prepetition interest in the assets of HVI Cat  
18 Canyon, which could have been perfected under the oil and  
19 gas lien statutes, they were required to file their 546(b)  
20 notices within 180 days of the petition date or on or about  
21 January 25, 2020. Instead, the notices of bar were not  
22 filed until February 24, 2020, a whole month later.

23           I note that the Trustee --

24           THE COURT: I'm sorry. Say that one more time.  
25 So January 25 is -- is the petition date, plus 180 days.

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1 So if there were any goods and services -- irrespect --  
2 money that are -- irrespective of what the 546(b) notice of  
3 lien says, it'd be impossible to use that mechanism  
4 because, you know, for anything that was prepetition based  
5 on when the 546(b) notice was actually filed.

6 MR. ISRAEL: Exactly, exactly.

7 THE COURT: Okay. And on top of that you're  
8 arguing that the 546(b) notice actually doesn't identify  
9 any goods and services or alleged goods and services were  
10 provided prepetition. Is that -- is that also your  
11 argument?

12 MR. ISRAEL: Yes, the notices say that they --  
13 when they're counting back is August and that's the date  
14 they come forward from.

15 THE COURT: So --

16 MR. ISRAEL: So the whole premise of the notices  
17 is based on post-petition delivery of services from -- and  
18 goods.

19 THE COURT: Right. So --

20 MR. ISRAEL: That doesn't exclude --

21 THE COURT: So to sum up your argument so far,  
22 one is you can't use that notice to create a lien of post-  
23 petition goods and services. It was too late to create a  
24 lien -- perfect the lien, I should say, too late to perfect  
25 any lien for prepetition services because the -- it was



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1 filed on February 24th; and third, could not have perfected  
2 a lien in any prepetition goods and services because it  
3 does mean by its terms (indiscernible).

4 MR. ISRAEL: Well, I think the last point is that  
5 it can't be -- I'm flipping around a little bit, but it  
6 can't be -- it can't apply to post-petition services or  
7 goods because 546(d) doesn't only apply to interest that  
8 were created prepetition that could have otherwise but for  
9 the bankruptcy filing had been perfected but -- the time is  
10 still open, so it still has to be a prepetition event.

11 THE COURT: No, no. I understand that as a  
12 matter of law, but --

13 MR. ISRAEL: Right.

14 THE COURT: -- aren't you also arguing that when  
15 you look at this -- and maybe you're not arguing this, that  
16 there's nothing in here that -- did they -- did they  
17 identify any prepetition goods and services as to which  
18 they're attempting to perfect a lien?

19 MR. ISRAEL: Not in the notice.

20 THE COURT: On every --

21 MR. ISRAEL: The notice says -- yeah, the notice  
22 says --

23 (Parties speaking simultaneously.)

24 MR. ISRAEL: Yeah, (indiscernible) --

25 THE COURT: (indiscernible) -- yeah, might

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1 (indiscernible) --

2 MR. ISRAEL: But -- okay, the notice says that  
3 date -- I'm quoting -- that date is August 2019 and it  
4 starts with August 19th which is obviously a post-petition  
5 date and goes forward from that to the 180 days terminating  
6 the -- on the date they filed their notice -- their 536  
7 notice in February.

8 THE COURT: So again, just to -- just to  
9 reiterate --

10 MR. ISRAEL: (Indiscernible) --

11 THE COURT: They don't -- they don't identify  
12 goods and prepetition -- in the notice of lien prepetition  
13 goods and services as to which they're purporting to  
14 perfect a lien?

15 MR. ISRAEL: Right. The lien notice says it only  
16 applies to post-petition from August forward.

17 THE COURT: Right. Okay. All right. Go ahead.  
18 I interrupted you. Go ahead.

19 MR. ISRAEL: No, but that -- that's the summary  
20 of the argument. I note that the Trustee also disputes the  
21 underlying debts asserted by the insiders on the merit and  
22 he also disputes that they ever had lien rights under those  
23 statutes.

24 Among other arguments those statutes don't cover  
25 either the purchase or sale of crude, the rendering of back

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1 room accounting services or equipment rental subject -- the  
2 court doesn't even have to go there on the merits which for  
3 today's purposes the lien notice -- notices are untimely on  
4 their face and the underlying lien statute is inapplicable  
5 to the notice that should be expunged.

6 THE COURT: Okay. All right. Thanks. I  
7 understand your position.

8 MS. TOMASCO.

9 MS. TOMASCO: Your Honor, first I'd like to say  
10 the -- they were filed within -- first we'll start with the  
11 statute and I also want to say that what was in the motion  
12 to expunge is not a concept of the amount of the merits of  
13 the liens. Only thing is in the liens it's such --

14 THE COURT: Okay. Hold on. Let me -- hold on.  
15 Hold on. All right. Are you speaking on a speaker phone  
16 and do you have the option of a headset? You're a little  
17 muffled. Oh, I see. You've got the --

18 MS. TOMASCO: Earbuds.

19 THE COURT: Yeah.

20 MS. TOMASCO: Does that work better? Okay.

21 THE COURT: Yeah, a little bit. Thank you.

22 MS. TOMASCO: All right. Okay. Just the problem  
23 is that we have a motion to expunge and part of me wants to  
24 say this is actually sort of a lien dispute. I mean, if it  
25 weren't for the allegation it was a stay violation we're

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1 really talking about, you know, these substantive rights  
2 and I don't (indiscernible) listen to my argument because I  
3 think the Trustee approaches it from a backwards analysis  
4 compared to where I approach it from.

5 But the first thing that I thought is it  
6 shouldn't be in an adversary because we're really talking  
7 about, you know, whether or not you have a lien. And in  
8 fact for the stay violation you might have put that in  
9 there and I do think that in a certain respect we do not  
10 have a sale -- we don't have any sale proceeds. There's  
11 nothing that these particular main assertions can attach  
12 to.

13 There's also filed yesterday applications for  
14 administrative expenses because there's one thing that's  
15 true about all of these charges. They were done post-  
16 petition and they benefitted the estate. And if there  
17 is --

18 THE COURT: Okay. Stop, stop there. Stop there.

19 MS. TOMASCO: Okay.

20 THE COURT: I have the notices of lien in front  
21 of me.

22 MS. TOMASCO: Um-hum.

23 THE COURT: And it's docket #822 -- 21, 22 and  
24 23. Can you walk me through where they assert prepetition  
25 amounts for goods and services provided prepetition?

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1 MS. TOMASCO: They are asserting for the amounts  
2 that are owed that they're -- all of the amounts are  
3 asserted for contracts that existed prepetition. So in  
4 other words, if you look at the --

5 THE COURT: That's not -- that's not what I  
6 asked. It's not what I asked. If they don't pertain to  
7 goods and services delivered prepetition, then please,  
8 please just concede the point and tell me your argument is  
9 really about the contract under which they arrived. Okay.  
10 But I don't have patience for obfuscation. Are any of  
11 these goods and services --

12 MS. TOMASCO: There --

13 THE COURT: Are any of these goods and services,  
14 were any of them delivered to the debtor prepetition?

15 MS. TOMASCO: Not according to the lien notices,  
16 Your Honor.

17 THE COURT: Okay. Thank you. All right. Go  
18 ahead. I'm all ears now.

19 MS. TOMASCO: Okay. I will say that there --  
20 that there is -- you know, there is -- the statute  
21 contemplates that there is a relation back to the date that  
22 the goods and services were provided, but the first date  
23 that goods and services were provided to the mineral estate  
24 by the lienholders. Now, that time is going to be a date  
25 on which the services as between the mineral lease and the

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1 lienholder first arose under the contract.

2           So if you will look at -- I was -- let me finish  
3 this point that I was making before and that is that, first  
4 of all, I think this is premature, essentially moot if the  
5 administrative claims are allowed. So to the extent that  
6 it's moot -- and those are set for hearing on the May 19th  
7 of this year.

8           THE COURT: Okay.

9           MS. TOMASCO: To the extent it's moot -- it's  
10 making an advisory opinion that the Court doesn't need to  
11 give and we have no sales proceeds so there's no reason to  
12 address these issues today. This is not an evidentiary  
13 hearing. It is only a motion hearing.

14           So I will go into the statute and explain to you  
15 why the statute provides for a relation back to the  
16 beginning of the contractual relationship between the  
17 entities. So 2002 is the beginning date of the Cat  
18 contract. Now, I believe it's asserted under this -- the  
19 lien notice for approximately two million dollars but the  
20 proof of (phonetic) point is 12 million dollars. And so  
21 that's a recognition that not all of the charges that are  
22 owed to Cat would qualify for a lien. In addition, the --  
23 and you can look at the proof of claim filed by Cat which  
24 is a proof of claim #125.

25           Now, proof of claim #126 the DIP has been

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1 providing all of the personnel administrative functions for  
2 the debtor and that prepetition amount that GIT reported as  
3 proof of claim meeting those dollars asserts a lien for 1.2  
4 million dollars and it asserts an administrative claim for  
5 those services of approximately \$900,000.

6 GTL actually trusts from the wells to whatever  
7 the purchaser's location is, whether that's Cat or some  
8 other purchaser. Those trucking services were provided by  
9 HVI managing \$979,000 on a post-petition basis. And so  
10 these are -- these are services that clearly qualify for a  
11 mineral use but for which the Trustee has not paid.

12 Now, so what we're looking at here and we put it  
13 in our briefing, which I think covers the bases, but the  
14 California lien statute which is found at Section 1203.56  
15 of the California Code (indiscernible) states:

16 "The lien provided for in this chapter arises on  
17 a date of the furnishing of the first item of material  
18 or services from the date of performance of the first  
19 waiver for which a lien is claimed under the  
20 provisions of this chapter."

21 So we know that in a lien contest on which the  
22 mineral lien statute was based that if -- if you're  
23 providing services over time, it's the date you first  
24 started providing these services and it's not some other  
25 thing. It's going to relate back in time for a practical

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1 reason in which you don't want your mineral lien from this  
2 to have to file a lien every six months just in order to  
3 have a right to (indiscernible) your position out to other  
4 claimants.

5           And this particular statute has not been  
6 interpreted what it means. What the Trustee says that it  
7 means I don't think it could mean that for a couple of  
8 reasons. One is that it says specifically that it arises  
9 on the day of the proceeds of the first item of material or  
10 service or the date of the performance of the first waiver.  
11 There's no reason to have the word "first" in there unless  
12 you're talking about the inflection of a contractual  
13 relationship which I recited to you. And this is all in  
14 our responsive papers.

15           And so there's another reason and they are  
16 seeking a lien for the first item of material or service or  
17 the date specifically and what that -- what that indicates  
18 is that that is -- stands by itself. Why would you have  
19 the word "first" in there? And so, Your Honor, I think  
20 that before, you know, we go too far ahead you have to  
21 recognize that this particular provision has not been  
22 construed by any in the case.

23           So we do know a couple of things. We know that  
24 it's well understood in the industry that a mechanics lien  
25 and (indiscernible) arrive on the first date the materials



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1 or services were provided in the course of the contractual  
2 relationship. Well, why do we know the contractual  
3 relationship is important? If you look at California Civil  
4 Code 1203.52 it says that the person who's entitled to a  
5 lien is a person who shall under contract perform services.  
6 And it talks about the future, to be used (indiscernible),  
7 shall be entitled to a lien.

8           So the contractual relationship is the focus of  
9 the statute and just like in (indiscernible) we all know  
10 that if -- if I go out and I start building a building and  
11 then -- and then a lien is filed on the building, the date  
12 that I first started excavating and the date that I  
13 delivered the materials to the building site is my relation  
14 back date. And the mineral lien statute understands it  
15 should be different for the mineral lien statute. In fact,  
16 everybody -- every commentator talking about the California  
17 lien statute says specifically that. We cite in our papers  
18 our motion in front of (phonetic) oil and gas mechanics  
19 lien citing specifically California Civil Procedure 1203.56  
20 and stating that it gives the priority dating back from the  
21 first labor or the first formation of material, even though  
22 a specific lien claimant may not have done this work or  
23 furnished its material until a later time.

24           And so for purposes of 546(d) when you look at  
25 the statute and they combine it with the state statute and

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1 what the state statute provides, we also know that the  
2 California Oil and Gas Lien Act was enacted to limit the  
3 scope of the property encumbered by a mechanics lien.  
4 Prior to the enactment of the statute oil and gas claimants  
5 would simply file a (indiscernible) but it would attach to  
6 the entirety of the real estate and not just the mineral  
7 estate. So California enacted this to effect -- in effect  
8 give *in rem* relief to oil and gas workers, but only  
9 attached to the real estate and not to the entire real  
10 property.

11 It was not enacted to change mineral lien  
12 (indiscernible) and we know from all of the cases  
13 interpreting (indiscernible) lien that those liens relate  
14 back to the date when the first construction was done, even  
15 to the lease's bills were for years later. And that's  
16 exactly what the California Legislature meant here,  
17 albeit I will admit that there is not a case that says  
18 specifically that. There is a lot of (indiscernible)  
19 evidence that that's what they meant.

20 In *Huntley v. U.S. Development and Guaranty*  
21 (phonetic), the California Supreme Court said that  
22 constrained mechanic lien, which is their assistance  
23 (phonetic), is the only reasonable construction of the  
24 corresponding provisions of the governing oil and gas  
25 liens. And so you have some evidence that the California

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1 Supreme Court believed that these things have to be  
2 interpreted consistently with each other. And we all know  
3 that California mechanics liens relate back to the first  
4 date work was performed under the contract.

5 And so the argument that if you -- if you only  
6 limit the lien -- the right to the lien or whether it  
7 arose -- whether it arose prepetition it's clear that it  
8 arose when the parties entered into a contract for services  
9 because the California Legislature and the Bankruptcy Code  
10 recognizes that it's not inappropriate to allow the oil and  
11 case liens extracted using the labor of the non-debtor and  
12 then not pay that non-debtor even though that oil and gas  
13 couldn't have been extracted but for that labor.

14 So this is the interest arrived under the  
15 statute. The prepetition interest in property evidenced by  
16 the -- by the contractor and then to interim cash to the  
17 proofs of claim (indiscernible) --

18 THE COURT: Could you say that again? I didn't  
19 get that.

20 MS. TOMASCO: The interest in -- okay, the  
21 interest in property arises under the contracts that are  
22 attached to the proofs of claim. The notice that is  
23 required under 546(b) can be as simple as a phone call  
24 that's found to be sufficient under their (indiscernible).  
25 The fact that the notices don't attach to the contract or

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1 otherwise provide the legal line going way back (phonetic)  
2 has not prevented any court from holding that they relate  
3 back under state law nonetheless.

4           So what we're talking here is the Trustee is  
5 attempting to take a notice that is not technically  
6 required, can be (indiscernible). It says, well, when you  
7 called and said, hey, look, I'm going to assert this lease,  
8 that was held to be sufficient and it was also held to be  
9 sufficient to say that even though he filed a lien  
10 (indiscernible) he still had good liens. And so that's the  
11 situation here.

12           What's in the motion simply note here asserting  
13 the lien, if you look at the proof of claim all of the  
14 contracts are cash, all of the invoices are attached. We  
15 asserted the lien for things that are proper under the  
16 statute and so that -- that is -- that is the gist of what  
17 we have here. And relying on what is not in -- in -- is  
18 not in the motive is improper under the present  
19 (indiscernible).

20           So we get into this issue about whether or not  
21 the fact that services were provided previous post-petition  
22 and that has likewise not been intended to having a new  
23 (indiscernible) Rule 16. In particular, there's a couple  
24 of cases that we cite and that involve environmental liens.  
25 In the *Corona Brothers* it was a case -- a case in which

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1 the -- all that had been done prepetition was that the  
2 environmental agency that had the right to assert a lien  
3 under the state statute said, hey, you need to clean this  
4 up or we're not -- or we're going to have to do it and then  
5 we'll assert a lien. That's all that happened prepetition.

6 And then post-petition the debtor didn't clean it  
7 up and the state agency came in and cleaned it up, inserted  
8 the lien, 100 percent post-petition services and the court  
9 upheld the lien. And it doesn't matter because it's  
10 related to a prepetition time period. Specifically the  
11 statute says the environmental agency will have a lien that  
12 is superior to all of their liens for cleaning up the  
13 statute. And the state agency gave the debtor notice  
14 prepetition that if you don't pay this for this -- for this  
15 to be cleaned up we're going to clean it up and we're going  
16 to assert a lien. And so the fact that all of the work is  
17 done post-petition is of no moment under the cases.

18 But the final reason why this relates to the  
19 prepetition time period is because of 502(g) and that is  
20 these were all services performed under executory contract.  
21 The Trustee asserts that 502(g) doesn't give rise to any  
22 particular trailing of claims and that's also not true.

23 We all know that then a lien arises for purposes  
24 of the Bankruptcy Code doesn't dictate whether or not it's  
25 secured or unsecured and we all know that, for example, if

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1 I'm representing a landlord and I have a landlord's lien or  
2 if it's enforceable or if I have a -- I have a security  
3 deposit, I apply that and then apply my 502(b)(6) claim. I  
4 don't apply it to my administrative expense claim and I  
5 certainly don't have to give it back to the Trustee simply  
6 because my claim is a prepetition claim under 502(g). I  
7 can go to those cases. They all are -- are briefing. I  
8 will just point out a couple of them.

9 We pointed out that the 502(g) claims were worked  
10 purposely with the rejections indicated under an executory  
11 contract. The case is *In Re: Ashley*, 4116 and 7  
12 (phonetic). It says that without an attorney charging the  
13 trustee in a Chapter 7 case there it can assume -- that the  
14 contract can continue to be contract binding. And the  
15 claimant argued that the charging lien for the attorneys  
16 was going to be a secured claim secured by the lien and the  
17 court upheld that.

18 More recently in California in (Indiscernible)  
19 *Factory*, 470 B.R. 510 (phonetic), that case holds that a  
20 prepetition security deposit is applied in the rejection  
21 liens that are also part of 502(g) claims by operation of  
22 Section 502.

23 Here what we have is that all of these services  
24 were provided under executory contracts that are attached  
25 to the proof of claim. Each of those contracts have been

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1 rejected. That's set forth in our papers. And the  
2 rejection is equivalent to a breach and here the breach is  
3 not just rejection, but the fact that post-petition  
4 services were provided weren't paid for but it's also  
5 provided as a nexus to the present -- pre-bankruptcy past  
6 that provides the banks were saying that these were  
7 prepetition funds.

8           In addition to the -- the important thing the  
9 state statute said specifically the lien arises for  
10 purposes of priority among different claimants on the date  
11 that the services were first provided. You can see why it  
12 is an important protection. If I am a -- if I'm providing  
13 (indiscernible) completion services on a particular lien,  
14 if I'm drilling several wells, not all those are going to  
15 be drilled contiguously. There may be a drilling here, a  
16 drilling there, and if I provided the services under a  
17 drilling contract and I'm doing it for more than six months  
18 and all of a sudden somebody comes in and says, well, I  
19 have a (indiscernible), you're basically cutting off that  
20 drilling completion provider so that I would be able to  
21 have a lien that was superior to someone who comes in and  
22 puts the deed of trust after all of the services have been  
23 provided and by (indiscernible) on the lease because those  
24 wells continue to produce.

25           The construction of the statute that the Trustee

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1 expounded (phonetic) makes no sense in real life and it  
2 doesn't comport with the plain language of the California  
3 statute. I'll answer any questions if you have any, Your  
4 Honor.

5 THE COURT: Okay. I was going to ask you what  
6 that beeping sound is, but that is my earpiece telling me  
7 that we're losing juice. So I'm going to switch. I'm  
8 going to let it charge and I'm going to switch to my  
9 speaker phone on the desk which is not as good, but it will  
10 have to do from now on. Can you hear me?

11 MR. ISRAEL: Yes.

12 MS. TOMASCO: Yes.

13 THE COURT: All right. I think I'll get these  
14 charged. I think I'd rather test with stand-alone. I  
15 (indiscernible). All right.

16 Ms. Tomasco, thank you. I understand your  
17 argument. Let me -- before I hear from the Trustee is  
18 there anyone out there that want to be heard on this?

19 MR. LITVAK: Your Honor, this is --

20 THE COURT: Yes.

21 MR. LITVAK: This is Max Litvak on behalf of the  
22 Creditors' Committee.

23 THE COURT: Mr. Litvak.

24 MR. LITVAK: I just wanted to -- yes, Your Honor.  
25 I just wanted to chime in in support of the Trustee's



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1 position on this.

2 THE COURT: Okay. So noted. All right.

3 Mr. Israel, you want to respond to Ms. Tomasco's  
4 oral argument?

5 MR. ISRAEL: Yes, Your Honor. The -- Your Honor,  
6 the three issues that Your Honor identified are still --  
7 are still germane and I submit positive here. The notice  
8 doesn't say anywhere that it relates to prepetition  
9 invoices. In fact, it expressly says on the notice that  
10 date is August, quote, unquote, 2019. And that's the --  
11 that's the -- what the notice purports to give a lien for.  
12 And even if this were -- even if they instead were  
13 referring or meant to refer to the prepetition period,  
14 that's all relevant to it. But the deadline under the  
15 state statute to the Court -- after the bankruptcy you  
16 still have to file a notice within 180 days. In Section  
17 546(b) it says you have to file the notice in the  
18 bankruptcy case within the period that the law provides.

19 Well, that's still 180 days which would have been  
20 January, so filing this notice even if it legitimately were  
21 to refer or deemed to refer to prepetition debts, it's  
22 still too late because they didn't file this until  
23 February. The filing 502(g) argument, Your Honor, I -- I  
24 don't even understand. 502 refers to a claim from  
25 rejection of a lease for executory contracts and that's

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1 clearly a prepetition claim. So there's no independent  
2 lien right under 502(g) and they can't add the two together  
3 again because 546(b) says it has to be done -- a notice has  
4 to be filed within the period authorized by state law. And  
5 state law --

6 THE COURT: I think the argument -- I think the  
7 argument is -- I'm not so -- (indiscernible) suggest that  
8 I'm persuaded by it necessarily but I think the argument is  
9 that 502(g) relegates -- rejects damages to prepetition  
10 status. I don't think there's any dispute about that  
11 that's what the statute says. These are post-  
12 petition dates and services. But the argument I think Ms.  
13 Tomasco is making is that -- trying to make is that the  
14 debt -- these debts don't have to become prepetition debts  
15 and, therefore, appropriately subject to this lien that  
16 she's trying -- they're trying to perfect. And I think  
17 the -- kind of the logic on particular point is that it's  
18 rejection damages that become the prepetition claim. To  
19 take somebody's goods and services post-petition and the  
20 debtor didn't pay for them, that's not -- that debt is a  
21 result from -- those aren't damages resulting from the  
22 projection. Those are damages that result from post-  
23 petition performance and a failure to pay those post-  
24 petition, right?

25 MS. TOMASCO: Your Honor, rejection simply means

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1 that the -- that the -- they repudiate the contract  
2 including payments simply because -- I agree --

3 THE COURT: Yeah.

4 MS. TOMASCO: I agree that's rare. I agree that  
5 it's rare you provide goods and services for the property  
6 post-petition, but that doesn't mean that the damages are  
7 not the same. If you -- if you reject the contract and you  
8 have a sub-hearing that is not otherwise entitled to  
9 administrative priority because it didn't benefit the  
10 estate, there are plenty of cases which say that those  
11 damages are still rejection damages because the Trustee  
12 decided to not assume the contract and cure those defaults.

13 THE COURT: Okay, is that something that the  
14 parties briefed? I don't remember that. I don't remember  
15 those cases.

16 MS. TOMASCO: Yeah, (indiscernible) not --

17 THE COURT: That's something (indiscernible) --

18 MS. TOMASCO: -- not that partic -- it's  
19 certainly not in the Trustee's papers. We do make the  
20 argument that the damages from a 502(g) claim are  
21 prepetition damages and can be treated as a secured claim.

22 THE COURT: Okay. That --

23 MS. TOMASCO: And (indiscernible) --

24 THE COURT: -- is a different argument. That's a  
25 different argument.

1 MS. TOMASCO: Right.

2 THE COURT: I mean, what we're talking -- what  
3 we're talking about here is this -- your -- you're trying  
4 to -- 6502(g) talks about a claim for damages resulting  
5 from the debtor's rejections. Okay. And if there have  
6 been goods and services provided post-petition and they  
7 haven't been paid for, I think that's probably post-  
8 petition obligation. I don't think that those are damages  
9 arising from the debtor's (indiscernible) performance. I  
10 don't think those -- I don't think those (indiscernible)  
11 damages but I'm not sure.

12 Anyway, we interrupted Mr. Israel. Go ahead,  
13 Ms. Israel.

14 MR. ISRAEL: Well, Your Honor, I think that has  
15 pretty much addressed the income. There are unpaid post-  
16 petition claims that are -- that they claim so file a  
17 request for an administrative claim, which they did I think  
18 two days ago and it's now been set for a hearing and we'll  
19 deal with that there.

20 As I mentioned, the Trustee disputes that,  
21 disputes who much is owed on the merits on many levels, but  
22 that -- those post-petition (indiscernible) do not sit  
23 within 546(d). That is limited to a lien member -- the oil  
24 and gas statute limited to prepetition obligations and a  
25 notice still has to be filed within 180 days which here

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1 would have been limited to -- which would have fallen in  
2 January. They would have had a right at that point from  
3 the prepetition for whatever was short, but it was still  
4 within the 180-day window but they didn't file it then.  
5 They filed it in February. So you can't --

6 MS. TOMASCO: Your Honor --

7 THE COURT: Hold on.

8 Go ahead, Mr. Israel.

9 MR. ISRAEL: No, and, Your Honor, we did discuss  
10 the 502(b) argument in our reply at pages 7 and 8 and the  
11 rejection damages are for repeating the contract or  
12 prepetition -- treat a prepetition claim and  
13 (indiscernible) unsecured claim for that. Even -- we have  
14 these already more than 180 days and can't relate back.  
15 I'm not sure if it -- even otherwise, but, you know,  
16 because they waited too long to file it. They didn't have  
17 to wait until they -- you rejected the agreement to file  
18 the lien notice. That could have been done -- that could  
19 have been done back in August.

20 THE COURT: Okay.

21 MR. ISRAEL: But they didn't file a lien.

22 MS. TOMASCO: And --

23 THE COURT: All right. Thank you, Mr. Israel.

24 MS. TOMASCO: Also --

25 THE COURT: As to all your general in relation

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1 back doctrine in oil and gas liens you -- and I guess that,  
2 you know, pertains, you know, generally to disputes about  
3 lienholders with respect to priority and really general  
4 principle we have a very specific statute here, the  
5 California statute which says (indiscernible), which says  
6 that you've got to file, you know, (indiscernible) de facto  
7 lien within 180 days providing goods and services.

8 Your suggestion that the relation back --

9 MS. TOMASCO: Right, Judge.

10 THE COURT: -- the relation back doctrine somehow  
11 trumps that and says, you know --

12 MS. TOMASCO: Yeah.

13 THE COURT: -- well, really all goes back to the  
14 very beginning of the contractual relationship. I don't  
15 follow that.

16 MS. TOMASCO: No. Your Honor, I think you're  
17 conflating a couple of different arguments. First of all,  
18 the statute is more like a range finder. We go -- the case  
19 should go back for six months of services so whether it's  
20 August to January or September to February, the statute  
21 limits you to look at a six-month look-back, not a month of  
22 preference period. So whenever you filed the lien that's  
23 how much of a look-back you get.

24 So instead of filing a lien, which 546(b) allows  
25 you to file (indiscernible), so if we have a property lien

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1 on a real property record in California and it's not the  
2 invoice date but it's the service date that controls and I  
3 think that's what the Trustee's argument is, well, fine.  
4 That means that our lien reaches back six months.

5 It still doesn't change the fact that the statute  
6 gives you six months of look-back liens from the moment you  
7 filed your lien notice under this California statute.  
8 That's how it works.

9 Just a couple of things to make sure I get them  
10 on the record because I want the record to be complete,  
11 that is, the statute has not been interpreted by any case  
12 in terms of what it means by these particular things. We  
13 know from *Rincon Island* that the notice can be oral. It  
14 doesn't have to be in writing and so any kind of notice  
15 will do. And the -- the statute doesn't provide a  
16 deadline. It gives you a look-back period.

17 So, for example, what if I'd been providing  
18 services on the oil and gas lease for a year and I haven't  
19 paid for the whole year and then I file a lien? Well, then  
20 my lien is good for six months of those services. It's  
21 just little -- how far back you can assert a lien. It  
22 doesn't -- it's not a deadline in that respect.

23 The second thing I want to say is that the  
24 statute -- the way the Trustee reads the statute it  
25 conflates a couple of provisions. The statute says the

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1 lien provided for in this chapter arises on the date of the  
2 furnishing of the first item of material or services or --  
3 big pause -- the date of performance of this first labor  
4 for which a lien claimed under the provisions of this  
5 chapter.

6           So for material of services it arises on the date  
7 of the first furnishing, but remember the statute requires  
8 there be a contract for those goods. And I would like  
9 you -- to cite to the Court, which is not in the papers, is  
10 the case of *White v. County of Sacramento*, which is 31 Cal.  
11 3d. 676, for the proposition that this is a -- it is a  
12 statutory construction item is that the first antecedent  
13 principle, not as a qualifying version for (indiscernible)  
14 could be applied to work that he had received and not  
15 (indiscernible) work to including others more of the note  
16 (indiscernible) or right the County affect  
17 (indiscernible) --

18           THE COURT: Why is that not in your papers?

19           MS. TOMASCO: Because it was in response to an  
20 issue raised in the Trustee's reply papers which we are  
21 allowed to talk about at the hearing.

22           THE COURT: Okay. All right, what's the  
23 citation?

24           MS. TOMASCO: 31 Cal. 3d. 676.

25           THE COURT: Okay.



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1 MS. TOMASCO: Every single -- every single  
2 penalty statute is interpreted to provide for relation back  
3 to the date that the services under the contract were first  
4 performed and California statute should be interpreted more  
5 differently. Each one of the secondary sources confirm  
6 that the statute relates back to the prepetition period  
7 which was this point which the contract services began.  
8 And then the six-month window is how far back your lien  
9 will reach in terms of (indiscernible) and that's how 90  
10 percent of mineral lien statutes are interpreted. It's not  
11 unlike an (indiscernible) statute on which this statute is  
12 based and that's how it looks in California, Dallas, Texas  
13 and Oklahoma and (indiscernible). So the idea that you can  
14 sort of do a "gotcha" in terms of timing doesn't really  
15 comport with the statute.

16 And the most important thing about California  
17 Civil Code under 1203.66 says specifically that the statute  
18 is to be interpreted literally in favor of plaintiff.  
19 That's why the statute was enacted. So if there is any  
20 ambiguity about how the statute is to be applied, it has to  
21 be applied in favor of the claimant. And here the claimant  
22 is -- has provided services in order to enable this estate  
23 to extract or redact and to receive proceeds and the  
24 claimant has not been paid for those services. And while  
25 the Trustee says that he does not agree with those amounts,

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1 in his papers he does not object to any of the evidence  
2 that is -- the claimants put forward including the amounts  
3 that were owed for -- for the services provided at the well  
4 head.

5 MR. ISRAEL: Your Honor, this is Eric Israel. I  
6 wanted (indiscernible) --

7 MS. TOMASCO: The statute --

8 THE COURT: Hold on. Let me (indiscernible) --

9 MS. TOMASCO: The statute per --

10 THE COURT: Go ahead. Go Ms. Tomasco.

11 MS. TOMASCO: Okay. I'm not -- okay. The cases  
12 interpreting 546 have distinguished between establishment  
13 of a lien and the instance of a prepetition interest in  
14 property. The Trustee's argument makes a fatal flaw in  
15 that he conflates the existence of a lien by filing the  
16 notice and the existence of a prepetition property right.  
17 The property right has been recognized as being less co-  
18 extensive (phonetic) to more broadly interpreted as a lien  
19 have included that, as we said, anything that ties the  
20 parties to a prepetition time period coupled with the right  
21 to assert a lien prepetition.

22 So the right to assert a lien prepetition, for  
23 example, is the *Corona* case and in the *229 Main Street*  
24 *Partnership* case, which is at 262 F.3d 1, that's a First  
25 Circuit case, makes a point that an interest in property is

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1 not limited to having actual lien rights. An interest in  
2 property that's anchored in the prepetition time period can  
3 be anything that gives rise to the right to file a lien.  
4 Obviously, the California mineral lien statute provides for  
5 a relation back in a priority scheme that recognizes that  
6 the estate that we first provided the services on the well  
7 head is when your lien arises. And if your lien arises or  
8 attaches when you (indiscernible) on that date, the  
9 perfection is not the creation of a lien, but simply the  
10 perfection of a lien, which is not the lien creation  
11 perfection completion. This is actually under the statute  
12 the creation is a creature of statute and the statute here  
13 clearly establishes that the lien is created on this date,  
14 if the parties first provide services to their mineral  
15 estate owners and those dates are set forth in the proof of  
16 claim.

17 THE COURT: So your argument is that the lien  
18 attached -- again, I'm going to take your invitation and  
19 read Article 9 because I'm a little more comfortable with  
20 it. The lien attached one that was created prepetition but  
21 the -- but the 180-day statute merely only refers to the  
22 extent to which one may perfect that lien. But your  
23 argument is that that lien, although in the post-petition  
24 period and services that were -- that provides -- you know,  
25 continued to be provided, continued to be secured they're

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1 only protected from the hypothetical rights of the Trustee  
2 and the lienholder to the extent of the 180 days from the  
3 notice. But the lien is not -- not perfected 180 days  
4 here, but the lien itself you're arguing was created when  
5 the goods were asserted to be first provided with an outlet  
6 (phonetic).

7 MS. TOMASCO: Correct, Your Honor.

8 THE COURT: All right.

9 MS. TOMASCO: So we think it -- so you think  
10 about it if I -- if the debtor has rights in the collateral  
11 and I sign a security interest with the lender, well, the  
12 lien is good as between those parties. It's not good if  
13 the third party (indiscernible). In this case the lien was  
14 good under the statute on the first date that the  
15 contractor provided services to the mineral lease holder  
16 and that's the date that's attached. Perfection is what  
17 546(b) allows you to do after the fact.

18 THE COURT: Yeah, okay. All right. I'm not sure  
19 that -- who I agree with, but I understand that.

20 Mr. Israel, do you want to respond? Hopefully  
21 you'll wrap it up here.

22 MR. ISRAEL: Yes. Your Honor, again, I would  
23 note that since the lien notices are recorded and referred  
24 all prepetition and this is all late, Your Honor, the  
25 notices that they -- the insiders are relying on. But I

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1 would -- and there's really outside the bankruptcy perhaps  
2 there's a liberal construction policy, but I would submit  
3 inside of bankruptcy we are having very specific ways --  
4 546(d) is a very narrow exception to the Trustee's power to  
5 take free and clear an unprotected lien, liens that aren't  
6 of record and that these weren't of record. Then, you  
7 know, they were ol -- they were either cash collateral  
8 motions. Their counsel is there, but those are said at any  
9 point the actions or the junior liens to everybody, you  
10 know, to the essential lienholder and the other insider,  
11 ECL, that 546 is very -- to put an (indiscernible)  
12 situation where they complied with what 546(d) says, do  
13 they get a lien to come ahead of the Trustee? They didn't  
14 do that because they didn't file it within the time period  
15 that California ECP requires. And, you know, again, the  
16 policy in bankruptcy is this is just the opposite of what a  
17 liberal construction permit is. You've got to do it right  
18 or leave it.

19 THE COURT: Well, I think what Ms. Tomasco is  
20 arguing, Mr. Israel, is that it was timely and this -- the  
21 goods and services that they're claiming were provided  
22 again 180 days of the notice that -- sort of treating that  
23 separately and distinctly from the argument about whether  
24 those needing services -- providing goods and services are  
25 somehow secured by a lien which is presumed to have a lien

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1 prepetition.

2 I agree it's strange -- feels like a strange  
3 argument in bankruptcy law, but oil and gas liens are a  
4 clouded universe of themselves and then when  
5 (indiscernible) the bankruptcy law it gets messy. So I  
6 mean, I'm not saying I necessarily agree with her, but I'm  
7 also -- at the moment I don't think we're arguing as your  
8 character (indiscernible).

9 I think her argument is that the notice of lien  
10 was the fact that you go back 180 days in goods and  
11 services which happen to have been delivered post-petition  
12 but which are entitled to the perfection of a lien that  
13 arose during the prepetition period. That's her argument  
14 and it -- it -- this is quite -- I think this creates a  
15 difficult (indiscernible). I don't think it's so clear for  
16 either of you, not at the moment. I'm not going to make --

17 MS. TOMASCO: Your Honor, thank you for  
18 (indiscernible) --

19 THE COURT: Yeah, go ahead quickly.

20 MS. TOMASCO: This is one more thing. Apparently  
21 this new argument has been lodged by the Trustee that we  
22 somehow waive the fact that we have separate liens by not  
23 objecting to the various cash collateral orders. First of  
24 all, we didn't realize the Trustee was not going to pay us  
25 for goods and services. And during that time period I

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1 think a person who provided services post-petition that are  
2 crucial to the extraction of oil and gas is somewhat  
3 surprised and then certainly we don't get paid for it.

4 The second thing is that if this lien is valid  
5 it would be prior to the imposition of a 2016 lien asserted  
6 by UBS. So the fact that we haven't asked for adequate  
7 protection is no labor at all and labor doesn't appear just  
8 in the Trustee's papers so it's a new argument. We just  
9 wanted to respond to it.

10 THE COURT: Okay.

11 MR. JONES: Your Honor, this is Evan Jones.

12 THE COURT: Hold on, hold on. Stop.

13 MR. JONES: Yes, Your Honor.

14 THE COURT: Stop, (indiscernible). Back up.

15 Mr. Israel, first let me hear from you and then  
16 I'll hear from Mr. Jones. Anything you want to put in  
17 response to that last comment.

18 MR. ISRAEL: Your Honor, I -- Ms. Tomasco has  
19 raised some new authorities that were not in her brief. I  
20 didn't understand her relationship back argument to be  
21 quite the way that she's submitting it now and in her  
22 opposition, which again was very different from the lien  
23 notices that we've filed a motion to expunge.

24 THE COURT: Okay.

25 MR. ISRAEL: But I will also submit I'm not aware

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1 of any order that says under 546(b) that this can apply as  
2 to the two post-petition (indiscernible) and, you know, I  
3 can certainly go to -- yeah, that they didn't cite that we  
4 weren't going to pay them. Well, they didn't pay us for  
5 1.6 million dollars of (indiscernible) the debtor in  
6 possession here, so --

7 THE COURT: Right. Well, I'm not --

8 MR. ISRAEL: Okay.

9 THE COURT: I'm not -- I'm trying to focus on the  
10 issues and not try to cite (indiscernible) back out. I get  
11 that. And at the end I'll consider whether a lien  
12 (indiscernible). Let me hear from Mr. Jones.

13 MR. JONES: Yes, thank you, Your Honor. Evan  
14 Jones on behalf of UBS. Your Honor, we did not file  
15 pleadings on this because the issue of lien priority is not  
16 before the Court. Ms. Tomasco has just raised for the very  
17 first time a suggestion that somehow this lien based on a  
18 fact sheet that is not the one it arises under relates  
19 back.

20 And I do have to point out, Your Honor, and I  
21 think it's important, Ms. Tomasco repeatedly says, well, if  
22 this were a different lien it would relate back and she  
23 says liens are supposed to be construed liberally in favor  
24 of a mechanics and material lien. This is not a mechanics  
25 and material lien and the statute specifically addresses



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1 what its priority is so when Ms. Tomasco says, well, let's  
2 go pick up a different statute and pick its term, I want to  
3 make sure that the Court is not misled by that into  
4 thinking this is a priority argument. It is not.

5 THE COURT: Well, I understand. I haven't been  
6 asked to rule on priority. I've been asked to expunge some  
7 notices and liens. But when you talk about the relation-  
8 back doctrine it's -- in respect to material meaning  
9 liens -- oil and gas leases it can have implication --  
10 priority implications.

11 So I think the thing to do here where these  
12 are -- I think this is a more -- at least as presented  
13 today a more difficult issue than maybe the papers  
14 suggested and there are people arguing who aren't even  
15 involved. I don't think it matters. I just think in  
16 fairness the discussion is widening and people on both  
17 sides I think the argument (indiscernible) introduced and  
18 UBS asserts -- feels like maybe they didn't have notice  
19 this is where the discussion was going and it could have  
20 implications for UBS's position.

21 So what I'm going to do is to permit additional  
22 briefing, you know, based on the discussion we had today.  
23 I think we have to widen. In *County* -- in fact *Meadow*  
24 case, 31 Cal. 37, 676 back (indiscernible) as well as  
25 addressing people's arguments -- parties' arguments as they

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1 are now understood, my intention would be to give anybody  
2 that wants to chime in an opportunity to participate in  
3 that additional briefing that I'm inclined to do -- I'm not  
4 sure that (indiscernible). Okay.

5 This isn't a requirement new (phonetic) and I'll  
6 hear you out if you disagree with the schedule. I'm  
7 inclined to continue the matter so our hearing on May 19  
8 beginning at 10:30 by -- any and all parties that want to  
9 file a supplemental brief needs to do so no later than  
10 May 8th, which is what (indiscernible) today and that's  
11 kind of everybody on all sides. And then we'll have  
12 simultaneous responses a week later on May 15th. Anybody  
13 have an issue with that?

14 MR. JONES: Your Honor, Evan Jones. Just I want  
15 to be real clear. We don't plan to participate in the  
16 motion as filed. It is a motion to expunge. I don't  
17 understand the Court to be saying that that motion is now  
18 being turned into an adversary proceeding on priority liens  
19 which certainly we would participate in.

20 THE COURT: Not that all, but as to the extent  
21 you're concerned it may come off as argument if I were to  
22 adopt them in the context of the motion to expunge them --  
23 motion to expunge it might have implications for your  
24 client and (indiscernible), Mr. Jones. Anything else?

25 MR. JONES: Your Honor, I apologize. I remain

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1 confused. If what you're telling me is I have to address  
2 for priority argument now then we have turned it into a  
3 priority.

4 THE COURT: Of course not. Of course not. It's  
5 not an adversary proceeding (indiscernible). I'm just  
6 saying your -- she's making argument that might have  
7 implications for your client. If you want those  
8 arguments -- if you want to prevent me from saying  
9 something that is wrong in this context that may make it  
10 more difficult for you in some way at another time that I'm  
11 giving you the opportunity to participate, I'm not  
12 requiring you --

13 MR. JONES: Thank you, Your Honor.

14 THE COURT: -- to participate and I'm not making  
15 any ruling that is, you know, preclusions of fact or  
16 whatever. But I'm trying to be sensitive to the  
17 fact that -- that those issues have been raised and I'm  
18 giving the opportunity to anybody and everybody that is  
19 here participating in the hearing to submit supplemental  
20 briefing and respond to the argument that they now  
21 understand because everybody's understanding on both sides  
22 it's only (indiscernible) involvement. You are welcome  
23 to --

24 MR. JONES: Thank you, Your Honor.

25 THE COURT: -- (indiscernible) argue. All right.

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1 That's what I meant. I didn't try it (indiscernible).

2 MR. JONES: Your Honor, I understand and thank  
3 you.

4 THE COURT: Okay. Anything else on this?

5 MR. ISRAEL: Your Honor, this is Eric -- this is  
6 Eric Israel.

7 THE COURT: Yes.

8 MR. ISRAEL: Let me -- may I have a brief  
9 response to this?

10 THE COURT: Yes. So let's see. So simultaneous  
11 supplemental briefs by any party that wishes to file them  
12 will be due on May 8th and then one week later anybody that  
13 wishes to reply to anybody's supplemental filings may do so  
14 no later than May 15th and then we'll have our hearing on  
15 May 19th.

16 MR. ISRAEL: Judge, should there be --

17 THE COURT: Okay.

18 MR. ISRAEL: Will we need a notice or scheduling  
19 order with this?

20 THE COURT: No, I don't think so. The only  
21 people that pertain to it are people that were -- cared  
22 enough to show up for the hearing.

23 MR. ISRAEL: Okay. Thank you, Your Honor.

24 THE COURT: Okay. And I have obviously had --  
25 well, it depends on what I get. I'm not promising you

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1 (indiscernible) that I'm going to limit (indiscernible). I  
2 might need to write something and whatever I do somebody is  
3 probably going to be unhappy. So -- but anyway, we'll have  
4 further argument. I will read the pleadings. I will read  
5 the cases and then we'll deal with it on the 19th if I can  
6 let go (phonetic). But if it continues to be promulgated  
7 and nuanced as it sounds, I may have to write something  
8 just to manage everybody's (indiscernible). Okay.

9 I think now we can move on to the last item on  
10 today's calendar and thank everybody for your patience so  
11 far. This was a motion for protective order and so the  
12 moving party -- and Ms. Tomasco, you are the lawyer to be  
13 heard on this also or just the last?

14 MS. TOMASCO: No, just me, Your Honor,  
15 (indiscernible). Can you hear me (indiscernible)?

16 THE COURT: All right. I'm sorry?

17 MS. TOMASCO: Can you hear me okay on speaker?

18 THE COURT: Okay, (indiscernible). So  
19 (indiscernible) served against GIT with a subpoena to copy  
20 a server that is in GIT's possession and I'll call it  
21 GIT -- GIT from (indiscernible) IT administrative services  
22 to the debtor for what it is and the debtor -- or GIT on  
23 behalf of the debtor placed documents on that server. The  
24 Trustee and its personnel apparently it had access to the  
25 debtor's emails and documents on the server for four

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1 months, but the debtor would like to make a copy of those.

2 And that -- or the Trustee, I should say, which is  
3 different than the debtor.

4 And so, Ms. Tomasco, you're asking for a  
5 protective order that does what, that as bankruptcy trustee  
6 you don't get any access?

7 MS. TOMASCO: Your Honor, the premise of the art  
8 of the question is not consistent with the facts. The  
9 Trustee sent a 2004 notice that says essentially if you  
10 look ECF #909 it says you're supposed to produce the  
11 server, not HVI's information on the server, but you're  
12 supposed to produce the server and let the Trustee have  
13 access to the whole thing.

14 And so as we set forth in the papers, the server  
15 hosts the debtor's emails and there's approximately 55  
16 people who have emails on that server that aren't or were  
17 HVI employees. The server also hosts emails from --

18 THE COURT: I'm sorry, from (indiscernible)?

19 MS. TOMASCO: -- 19 --

20 THE COURT: You said 55 people from the debtor  
21 had access to and stored the documents on the server?

22 MS. TOMASCO: They had access to their emails and  
23 their documents on the server. They didn't have access to  
24 everybody's emails and --

25 THE COURT: Okay.

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1 MS. TOMASCO: -- if you look at our reply you'll  
2 see that that's supported by a declaration. So it's  
3 segmented. Just like any other server or cloud service  
4 it's not as if you can send an email -- I mean, a subpoena  
5 and say, give me all of the emails on your cloud because  
6 they belong to various companies that store their  
7 information there. So the --

8 THE COURT: And the --

9 MS. TOMASCO: -- Trustee --

10 THE COURT: Wasn't the information neatly  
11 partitioned? Is there an HVI --

12 MS. TOMASCO: Yes, it --

13 THE COURT: -- Cat Canyon section of the server?

14 MS. TOMASCO: There are HV -- there are HVI  
15 individual employees have their own desktop where they keep  
16 their own files. And so they would have -- the Trustee  
17 already has the desktop computers and then the email server  
18 has on top of that their emails. But it's just like you  
19 can't look at my emails and I can't look at your emails  
20 even if we were on the same server. It's not as if he even  
21 had access to them. So what we're talking about is -- and  
22 I made a -- I think a valiant effort --

23 MR. ISRAEL: Think that's (indiscernible) --

24 MS. TOMASCO: -- to propose the relation --

25 (Parties speaking simultaneous.)

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1 MS. TOMASCO: -- (indiscernible) stipulations --

2 THE COURT: I'm sorry. Somebody needs to mute.

3 I'm hearing (indiscernible) CourtCall (indiscernible).

4 MS. TOMASCO: Okay.

5 THE COURT: We get (indiscernible) --

6 MS. TOMASCO: So --

7 THE COURT: Hold on, hold on. Okay. The fuser  
8 is on now. Go ahead.

9 MS. TOMASCO: Okay. So we made that stipulation.  
10 We can find that that ECF --

11 THE COURT: I can't hear you now, ma'am. I can't  
12 hear Ms. Tomasco. You need to stop -- stop, stop, stop.

13 COURTCALL OPERATOR: Yeah, this is the operator.  
14 Ms. Tomasco's line just disconnected.

15 THE COURT: Okay. I wish she would have entered  
16 video feed. Got to stop, stop, stop, stop. Oh.

17 Ms. Tomasco, we can't hear a thing you said. Do  
18 you have a number for her to dial her back, by any chance?

19 COURTCALL OPERATOR: I can try to dial her on the  
20 number that she connected on.

21 THE COURT: Yes, please.

22 COURTCALL OPERATOR: Okay. One moment, please.

23 THE COURT: Thank you.

24 (Pause)

25 MR. SCHULMAN: Your Honor, this is George



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1 Schulman. I'll be arguing for the Trustee --

2 THE COURT: Okay.

3 MR. SCHULMAN: -- on Ms. Tomasco and emails that  
4 she's disconnected.

5 THE COURT: Okay. Thank you.

6 COURTCALL OPERATOR: Your Honor, I did get the  
7 voicemail for Ms. Tomasco.

8 THE COURT: Okay. Well, hopefully she'll try to  
9 call in. We all need to sort of be on hold so we can get  
10 her back. She's checked her email. She's looking at  
11 (indiscernible).

12 (Extended pause)

13 COURTCALL OPERATOR: Sorry for interruption, Your  
14 Honor. Ms. Tomasco has returned.

15 THE COURT: Okay. Ms. Tomasco, we really didn't  
16 hear anything you said since the last time you and I had a  
17 colloquy. So why don't you repeat yourself and  
18 (indiscernible) -- no words just repetitive I don't think  
19 we heard from today.

20 MS. TOMASCO: Well, it was great, Your Honor.  
21 I'll try to imitate it.

22 THE COURT: Yeah, I'm sure it was.

23 MS. TOMASCO: Okay. So I believe about 55  
24 employees. I proposed a stipulation to the Trustee. You  
25 can find that at ECF #909 along about page 44 and 41.

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1 That's the stipulation as proposed. Okay. We provided you  
2 with all this stuff and here is what we think and deliver  
3 sort of HVI material then. Here's how we plan to propose  
4 to give it to you. We're going to give you without review  
5 approximately 50 employees' emails without -- because the  
6 Trustee owns privilege and there's no issues.

7 And so I made that proposal early on the morning  
8 of April 6th knowing that we had a deadline of April 6th to  
9 file our motions for protective order because obviously,  
10 you know, just like Google can't, you know, give other  
11 people's -- you know, other companies' emails just because  
12 they're subpoenaed to another company that's what the  
13 Trustee is essentially asking for.

14 I provided Mr. Skillman with lots of information  
15 about the server, how many sites are on there, how many  
16 company emails are on there, how they're protected from  
17 each other. We sent emails. We had a meet-and-confer on  
18 that Friday, which is the 3rd, and he said, "Make a  
19 proposal." So I got with the client, worked through all  
20 the technical issues and said, "This is what we can do,"  
21 and I never heard back from him.

22 So my (indiscernible) is a couple -- is two-fold.  
23 I would like the Judge to look at the stipulation we  
24 proposed. It provides 90 percent -- 95 percent of the  
25 information that is HVI's information on the server that

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1 hasn't already been provided and contained a Bates label  
2 for these documents we provided which is upwards of 10,000  
3 documents in addition to all of the informal requests that  
4 I can also provide to Your Honor but they were too  
5 voluminous for me to attach, imagine.

6           And then we want to provide this information to  
7 the Trustee but what we cannot do is simply take a server  
8 that has ten different companies' information that has  
9 nothing to do with the debtor and turn that over to the  
10 Trustee simply because he doesn't want to articulate  
11 individual document requests to which we can respond. If  
12 he says turn over the server and only one company's  
13 information is what he seeks, then he needs to make that in  
14 the request, but what he requested was the entire server  
15 without limitation and that's the objection, Your Honor.

16           THE COURT: Okay. All right. Mr. Schulman?

17           MR. SCHULMAN: Yes, thank you, Your Honor.  
18 George Schulman for the Trustee. What we found through  
19 this process is some additional information about a server  
20 that the Trustee didn't have when he first made the request  
21 and the Trustee certainly didn't have at the time of the  
22 meet-and-confer. In the motion that is attached a  
23 declaration from Mr. Alvarez (phonetic) -- I hope I  
24 pronounce that right; I apologize if I didn't -- it says  
25 the server included information from there entities

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1 including Cat and GTLI.

2 In reply there's a new declaration from  
3 Mr. Alvarez which says that the server attaches information  
4 from about seven entities and it's at least that. So we  
5 still don't have an indication of who all of the people are  
6 on the server.

7 In the original declaration --

8 THE COURT: Okay. Stop for -- stop for --

9 MR. SCHULMAN: -- (indiscernible) --

10 THE COURT: Mr. Schulman, Mr. Schulman --

11 MR. SCHULMAN: -- (indiscernible) --

12 THE COURT: Mr. Schulman.

13 MR. SCHULMAN: Yes.

14 THE COURT: Mr. Schulman.

15 MR. SCHULMAN: Yes.

16 THE COURT: Stop there for a second. I know it's  
17 hard, but I really want to stop. This is an important  
18 point to stop on. What are you getting at? Are you trying  
19 to get at -- are you trying to obtain documents from other  
20 companies regarding their transactions with the debtor or  
21 --

22 MR. SCHULMAN: No.

23 THE COURT: Okay. Or are you just -- is what  
24 you're asking for -- do you want the debtor's documents?

25 MR. SCHULMAN: That's it.

1 THE COURT: Okay. So what does it matter --  
2 okay, what -- who -- other people -- other entities'  
3 documents are that you're not getting or is that your only  
4 request -- why should you get the copy, eat terabytes  
5 that -- some portion of which is not responsive to your  
6 request? That's what I'm trying to understand.

7 MR. SCHULMAN: Right, I understand that, Your  
8 Honor. The request is still open for -- for our  
9 property -- for the Trustee's property but we still don't  
10 fully understand how to describe that on the server, if I  
11 may go on with the problems. We're now getting in better  
12 shape with who else is on the server. As I say, in the  
13 original motion there is no mention of separate folders or  
14 (indiscernible) folders. In the reply Mr. Alvarez says  
15 that there is -- there are separate folders which makes it  
16 easy for them to give up basically HVI's folders and nobody  
17 else's folders.

18 But he also says that the limit is set  
19 (indiscernible) folders that he doesn't (indiscernible) and  
20 perhaps the public folder is an Outlook file for everybody  
21 who ever had access to the server. Perhaps it's their  
22 Microsoft Word documents. We simply do not know. And  
23 the -- and GIT has not been forthcoming with a description  
24 of what that is of precisely how that's proposed to come  
25 down. As I said, we're only interested in the debtor's

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1 documents.

2           They also -- they gave us some documents that  
3 belonged -- that Ms. Tomasco says 55 people. We don't have  
4 a list of 55 people so we can who's included and we can  
5 say, you left out Joe or you've included somebody who we  
6 have to tell you in good faith doesn't belong. And when we  
7 give you an idea of people who we want to know whether  
8 they're on the list. Those would include Mr. Randeep  
9 Grewald, who is the director of the debtor and is an  
10 officer of the debtor. We would want to include Mr.  
11 Dimitrijevic. I hope I pronounced that right. Who is the  
12 chief executive officer. We would want to include the Sal  
13 Alavarez (phonetic), who was the secretary for a while. So  
14 it's important to know who's included and not just say,  
15 well, there's a lot of people we propose to get emails  
16 from. We're not here to buy a pig in a poke.

17           And it may even be that even when they tell us  
18 who's on the list that we feel missed somebody because  
19 accountants back in New York are doing the tax returns  
20 doing accounting functions for the debtor is filing a  
21 consolidated tax return for other entities are not on the  
22 list and we're entitled to know who's on the list. I'm  
23 happy to narrow it if I get some factual description of  
24 what's going on, how the server is broken down, what files  
25 are actually on the server, what partitions are actually on

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1 the server so I can determine what areas are HVI's, which  
2 areas are not HVI's, and then a third bucket of what areas  
3 of which Ms. Tomasco and I can't agree we might have to  
4 come back to Your Honor for some sort of resolution.

5 But we didn't even have as much information we  
6 have until the reply which was filed yesterday and we still  
7 don't have complete information. But what we're after is  
8 the debtor's documents on the server and it's if GIT wants  
9 to engage in a process to tell us what is -- how that  
10 server is broken down and how the files are kept and who  
11 will make a move to give us files about it, then we'll have  
12 a better idea what it is we've been getting.

13 Let me add, they all refer to -- they've given us  
14 desktop computers. I don't know what's on those desktop  
15 computers for those employees versus what's on the server.  
16 I can tell you from my desktop computer at Danning Gill, it  
17 has no stored email on it unless I tell it to store emails  
18 in a folder on my desktop computer. I'm sure all are  
19 stored in the central server. The same is true for every  
20 document that I work on. And my experience is, is that's  
21 how -- that's how modern computer systems work.

22 Now, perhaps Ms. Tomasco has explained why that's  
23 not so, how everybody gets their own emails on their own  
24 computers 100 percent of the time, but that's not how  
25 Outlook works in an environment where a whole bunch of

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1 people have access to all of them.

2 THE COURT: Well, to be more precise I mean if  
3 there's an Outlook server it's very likely that there are  
4 emails on the server. In the old days Outlook had files --  
5 has GIT files in an individual instance that's not  
6 necessarily connected to a server.

7 I'm not particularly impressed with arguments of  
8 the type that say, well, you know, we gave them the  
9 computer -- the desktop computers and so we shouldn't have  
10 to give them the stuff that's on the server. It may be  
11 different. I'm not -- again, I'm not impressed with that  
12 argument because sometimes what's on the desktop is not the  
13 same as what's on the server and it's unfair to parties to  
14 make that assumption without producing the electronically  
15 stored information from each of those separate sources  
16 which isn't better information. You know, some of it may  
17 turn out to be duplicative.

18 But look, my sense of this is that, you know,  
19 demands are being made. Ms. Tomasco's client hasn't  
20 reached a resolution, self-compelled to file this motion  
21 for protective order, but it feels like even in the last so  
22 many days the parties are learning more and should probably  
23 continue their efforts to defer and solve this without  
24 judicial intervention. I tend to think that that is  
25 usually a better resolution.



1 I will give you some guidance, though, and that  
2 is that at the moment I'm not impressed with the arguments  
3 they gave us the whole server. On the other hand I'm not  
4 impressed with its position. You know, we offered them --  
5 you know, the short list of things without all of the  
6 necessary -- all of the information necessary that goes  
7 into getting comfortable, that those things aren't  
8 sufficiently responsive, so I think there's some merit on  
9 both sides.

10 I don't think this is sufficiently right and my  
11 inclination would be to just to continue to our May 19th  
12 date and implore both sides to continue having this  
13 dialogue and sharing information. I don't like -- I think  
14 the kinds of questions that Mr. Schulman is asking in terms  
15 of how the electronically stored information is, in fact,  
16 stored, how the partitions were set up, what's the  
17 relationship between those and the desktop is, what were  
18 the -- you know, what were the procedures and how can the  
19 information be segregated and produced are all appropriate  
20 questions.

21 And it sounds like there's some inadvertent  
22 progress in sharing information in connection with the  
23 pleadings that were filed, but I still don't think that I  
24 have enough of a picture to rule in this and I really would  
25 like the parties to try to sort it out. So my inclination

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1 is to continue it with that guidance and those caveats.

2 Anybody want to say anything else?

3 MS. TOMASCO: Your Honor, I suppose the  
4 stipulations on April 6th that the Trustee never responded  
5 to, I --

6 THE COURT: All right.

7 MS. TOMASCO: In light --

8 THE COURT: Well, I can respond as part of your  
9 continued meet-and-confer process. I can respond and tell  
10 you what's -- you know, what's wrong with it or what they  
11 propose in response.

12 MR. SCHULMAN: Your Honor, this is --

13 MS. TOMASCO: Now, I just want --

14 MR. SCHULMAN: -- George Schulman. I would like  
15 GIT to provide to us two things that would help move the  
16 discussion along that I've already mentioned: a list of  
17 the people whose documents they propose to give us, the  
18 names of those people so we know who's included in that  
19 universe; and number two, the file structure on the server  
20 which is not going to be disclosing anything privileged  
21 unless it's a file that says here's where the bodies are  
22 buried in the south 40.

23 THE COURT: Right. Ms. Tomasco, I think those  
24 are reasonable requests.

25 MS. TOMASCO: We have -- I have a list of

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1 employees. In terms of the file architecture as long as I  
2 can, you know -- there are -- there are -- as I said, given  
3 our money companies that store their information on there,  
4 they're each entitled to not have their information shared  
5 absent a directed request from the Trustee. The Trustee is  
6 entitled to all of HVI's information, he is entitled to all  
7 of HVI's privilege and that's why I've been endeavoring to  
8 get to him but I can't -- I can't do it under the sword of  
9 Damocles of give me the entire server.

10 THE COURT: All right. Well, good. You got your  
11 motion on file. We've had preliminary discussions -- no,  
12 no, no. Stop. Stop talking. I really don't want to  
13 prolong this any more than we absolutely have to. You got  
14 your motion for protective order on -- you saw I'm not  
15 ready to rule on it because I don't think -- and I don't  
16 fault you for filing it to protect your client, but it  
17 seems to me that there's an opportunity here for the  
18 parties to keep talking and resolve this consensually.

19 I do think that the information that Mr. Schulman  
20 is asking is all a reasonable request. I realize the list  
21 of employees might be more important, you know, time-wise  
22 and may be a little quicker to get that in than additional  
23 information on how the server is organized, but in the next  
24 week or two it seems to me you should be able to provide  
25 that to him and you guys can go from there.

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1 But I'm not going to force either of the  
2 options -- any of the options I can give him I'm not going  
3 to force as an order of the Court a stipulation, as to the  
4 information Mr. Schulman was looking for. I'm not going to  
5 give the Trustee *carte blanche* to copy all eight terabytes  
6 and I'm certainly not going to shield GIT from having to  
7 produce the debtor's documents, so I don't know what more I  
8 can tell you at this point.

9 Mr. Schulman, what --

10 MR. SCHULMAN: It wasn't --

11 THE COURT: Mr. Schulman?

12 MR. SCHULMAN: Yes, thank you. That point, we  
13 will work towards that. But if I don't get those pieces  
14 because somebody thinks that even giving me that  
15 information is privileged, we'll be back on the 19th.

16 THE COURT: Well, yeah, and that will probably be  
17 a ridiculous position. I'm not sure how the architecture  
18 how information is stored why that would be privileged.  
19 It's only communications between -- the substance of  
20 communications really that would be privileged and not -- I  
21 don't see that -- I really don't see how the architecture  
22 how information is organized and partitioned and whatnot  
23 would reveal that. And I don't think it's Ms. Tomasco's  
24 taking that position either, so --

25 MS. TOMASCO: I'm not, Your Honor.

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1 THE COURT: Yeah. So go back, keep talking. I'm  
2 not ruling on that today. That's continued to May 19th.

3 All right. Is there anything -- is there  
4 anything the Court -- that was on the calendar that the  
5 Court has not disposed of that someone wants to be heard  
6 on?

7 MR. JONES: Your Honor, it's Evan Jones. That --  
8 I would just note for the Court's information we have  
9 uploaded -- or the debtor -- the Trustee has uploaded the  
10 owner on the borrowing. However, I do want to inform the  
11 Court that I'm informed and believe that the money has been  
12 lawyered already so the Court need not spend the evening  
13 looking at that order.

14 THE COURT: Okay. All right. I appreciate that.  
15 I appreciate the -- would consider UBS's willingness to do  
16 that as an act of good faith and professional courtesy.  
17 Again I appreciate it. Thank you. I will take up the  
18 order tomorrow. It doesn't sound like there was any -- by  
19 the time we were done talking there really wasn't any  
20 controversy left with respect to that order, but I will  
21 pick it up and that should be, assuming I don't have any  
22 issues with it, signed and entered tomorrow.

23 MR. JONES: Thank you, Your Honor.

24 THE COURT: Okay. All right. Anything else?  
25 All right. I appreciate everyone's patience with regards

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1 to the technology and for those of you that participated by  
2 video, thank you. Certainly made it better for me in terms  
3 of being able to connect with each of you and to be able to  
4 see you and hopefully, you know, you (indiscernible) the  
5 Judge, but I won't have (indiscernible) to comment on that.  
6 So thank you.

7 I hope you all please stay healthy and safe and I  
8 will see and hear from you if not sooner on May 19th.  
9 Thank you.

10 PARTIES: Thank you.

11 THE COURT: All right.

12 (End at 4:25 p.m.)

13 \* \* \* \* \*

14 I certify that the foregoing is a correct  
15 transcript from the electronic sound recording of the  
16 proceedings in the above-entitled matter.

17

18

19 \_\_\_\_\_ Date: 5/2/2020

20 RUTH ANN HAGER, C.E.T.\*\*D-641

21

22

23

24

25

### PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 400 S Hope St, Los Angeles, CA 90071

A true and correct copy of the foregoing document entitled SUPPLEMENTAL BRIEF OF UBS AG, LONDON BRANCH AND UBS AG, STAMFORD BRANCH IN SUPPORT OF TRUSTEE'S MOTION TO EXPUNGE NOTICES OF OIL AND GAS LIENS FILED BY CALIFORNIA ASPHALT PRODUCTION, INC., GTL1, LLC, AND GIT, INC.; DECLARATION OF BRIAN M. METCALF IN SUPPORT THEREOF will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* 05/08/20, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

see attached page

☒ Service information continued on

**2. SERVED BY UNITED STATES MAIL:**

On *(date)* 05/08/20, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

see attached page

☒ Service information continued on attached

page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL**

(state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)*, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

05/08/20

Lee Lattin

*Date*

*Printed Name*

/s/ Lee Lattin

*Signature*

**ADDITIONAL SERVICE INFORMATION**

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**

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